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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Zaire, prepared by the Special Rapporteur, Mr. Roberto Garretón, in accordance with Commission resolution 1996/77

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Acronyms

UNHCR	United Nations High Commissioner for Refugees
HCHR	High Commissioner for Human Rights
AFDL	Alliance of Democratic Forces for the Liberation of Congo-Zaire
AZADHO	Zairian Association for the Protection of Human Rights (Association Zairoise pour la défense des droits de l'homme)
CHR	Commission on Human Rights
CENSURE-Z	Central Office for the Monitoring of Elections in Zaire
CERD	Committee on the Elimination of Racial Discrimination
CNE	National Electoral Commission
CNPPDH	National Commission for the Promotion and Protection of Human Rights
CNS	National Sovereign Conference
DSP	Special Presidential Division (Division spéciale présidentielle)
FAR	Rwandan Armed Forces
FAZ	Zairian Armed Forces
FPC	Conclave Political Forces (Force politique du conclave)
GC	Civil Guard
HCR-PT	Supreme Council of the Republic - Transitional Parliament (Haute Conseil de la Republique - Parlement de Transition)
MPR	People's Movement for the Revolution
NGO	Non-governmental organization
PALU	Unified Lumumbist Party
PANADI	Party of Nationalists for Integral Development
PDSC	Christian Democratic and Social Party
SARM	Action and Military Information Service
UDI	Union of Independent Democrats
UDPS	Union for Democracy and Social Progress
UFERI	Union of Independent Federalists

USORAL Sacred Union of the Radical Opposition and Allies (Union sacrée de l'opposition radicale et alliés)

VSV The Voice of the voiceless (Voix des sans voix)

ZCSO Zairian Camp Security Operation

ANEZA, GEAPO, MUUNGANO and SYEZA are non-governmental organizations identified only by their acronyms.

Whenever no year is indicated for a date, the year is assumed to be 1996.

I. INTRODUCTION

A. Mandate of the Special Rapporteur

1. The Commission on Human Rights, in its resolution 1994/87, decided to deal with the situation of human rights in Zaire, for which purpose it appointed a Special Rapporteur. In its resolutions 1995/69 and 1996/77, the Commission took note with appreciation of the reports of the Special Rapporteur, decided to keep the problem under consideration and extended his mandate. This document therefore constitutes the third report and contains information that was available up to 20 December.

B. Activities of the Special Rapporteur

2. During the year under review, the Special Rapporteur held consultations in Brussels from 9 to 13 September and in Geneva on 25 and 26 November, as well as 9 to 13 December, during which he interviewed a large number of political leaders, members of international human rights organizations, scientists, geographers, historians, journalists and analysts of developments in Zaire. He had meetings with the Permanent Representative of Zaire to the United Nations Office in Geneva and with the human rights adviser to the Prime Minister of Zaire.

3. On 30 May he requested the Government to extend him an invitation to visit Zaire from 14 to 26 October, and repeated his request on 24 July and 17 September. On 2 October the Government agreed to the mission but warned that the present report should reflect any findings in an objective manner.

4. During his mission the Special Rapporteur visited Kinshasa, Goma and Bukavu, armed conflict already taking place in the latter towns. He was unable to go to Uvira, for reasons of United Nations security. In Goma he visited a pigmy or Batwa community.

5. In Zaire he had talks with the following officials: Mr. Kamanda wa Kamanda, Deputy Prime Minister and Minister for Decentralization, Mr. Nsinga Ndjuu, Minister of Justice, Mr. Lokondo Yoka, Deputy Minister for Foreign Affairs, Mr. Anzuluni Bembe, First Vice-President of HCR-PT and Mr. Lutundula, one of the second Vice-Presidents, Mr. Salomón Tudieschi, human rights representative in the Prime Minister's Cabinet, Mr. Athanase Kahanya Kimuha Tassi, Deputy Governor of the Northern Kivu region, Mr Mashako Mamba Sébi, Mayor of Goma and Pastor Kyembwa Walu Mona, Governor of South Kivu.

6. In the absence of the Chairman of CNPPDH, he had two separate interviews with three of its members, namely, Salomón Tudieschi, Colonel Mbidi Nikéni, a military judge, and Bokoko Maurice Blondel, representative of the journalists.

7. He had a working meeting with the Bureau of CNE, attended by its Chairman and Vice-Chairman, Bayona Bameya and Kasongo.

8. He also spoke with Mgr. Faustin Ngabu, the Catholic Archbishop of Goma.

9. He had meetings with representatives of United Nations bodies - for example the delegations of UNHCR in Bukavu and Goma and UNDP in Goma, Bukavu and Kinshasa, as well as with the Director of the United Nations electoral assistance mission.

10. He received the following non-governmental organizations: Association des cadres pénitentiaires du Zaire, Association internationale des avocats et magistrats défenseurs des droits de l'homme, Association Liberté, Association MUUNGANO, Association nationale des entrepreneurs zairois (ANEZA); Association pour la protection des droits de l'homme (APDH); Association zairoise de défense des droits de l'homme (AZADHO); Campagne pour la paix; CARITAS-Bukavu; Centre des droits de l'homme et du droit humanitaire; Centre d'information, de recherce et de solidarité avec le Zaire, Centre pour la formation et la protection des droits de l'homme (CFPD); Centre zairois de l'enfant at de la famille; Collective des Associations de défense des droits de l'homme au Nord-Kivu (CADHO-Nord-Kivu); Commission electorate indépendante; Commission justice et paix-diocèse de Goma; Comite pour la démocratie et les droit de l'homme (CDDH); Conseil national des associations pour la démocratie et les droits de l'homme; Conseil pour la paix et la reconciliation (COPARE); Conseil régional des ONG (CRONG); Corps de volontaires observateurs du Zaire; Défense internationale des enfants, Eveil de la Femme; Fédération des droits de l'homme; Fédération pour la défense et la protection des droits humains; Femmes chrètiennes pour la démocratie et le développement; Femmes et enfants pour les droits de l'homme-Kasai Occidental; Fraternité nationale des prisons au Zaire; GEAPO-Sud-Kivu; Grande vision; Groupe Amos; Groupe des voluntaires pour la paix (GVP); Groupe Jérémie; Hetitiers de la justice; Institut de recherce pour la paix, Légion d'amitié pour la paix et la solidarité entre les peuples; Les amis de Martin Luther pour les droits de l'homme-Kisangani; Ligue de conscientisation des électeurs; Ligue des droits de l'homme au Maniema; Ligue des droits de l'homme-Zaire; Ligue des electeurs; Ligue nationale pour les élections libres et transparentes; Ligue zairoise de défense des droits des étudiants et des élèves; Ligue zairoise des droits de l'homme (LIZADHO-fédération Sud-Kivu); Ordre des pharmaciens; Paix pour les déshérités; Programme national de prevention, de lutte et d'assistance humanitaire aux victimes de catastrophes; Promotion de la démocratie et protection des droits de l'homme; Societié civile-Campaigne pour la paix au Nord-Kivu; Société civile SYEZA-Sud-Kivu; Société internationale pour les droits de l'homme; Toges noires; Voix des sans voix (VSV).

11. He also talked with representatives of the banyamulengue community of Kinshasa, the Directors of the Virunga Farmers Association (MAGRIVI) and Shinga Rwarabuba and Rémi Kalégamire, the members of Parliament whose mandates had been revoked by HCR-PT.

12. He had meetings with political leaders such as the Chairman of USORAL, the Chairman of PDSC and UDI of Southern Kivu and the Chairman of PANADI, who also acted as representative of the descendants of displaced persons from Rwanda and Burundi, as well as with members of the Cabinet of Etienne Tschisekedi, the former Prime Minister.

Mission to Rwanda

13. At the request of CHR, the Special Rapporteur has included in his reports an analysis of ethnic conflicts, including that in Northern Kivu. Certain information on this conflict led the High Commissioner for Human Rights to request the Special Rapporteur to undertake a mission to that area. Unfortunately, the Special Rapporteur failed to receive the required invitation so that he was only able to make his visit to Rwanda between 6 and 12 July to the town of Gisenyi, to which thousands of Zairian refugees had flocked.

14. His report on this visit, drawn up on 30 July (E/CN.4/1997/6/Add.1), gives an account of what was happening in Northern Kivu and draws attention to the danger of a possible war in Southern Kivu, owing to the repudiation of the Zairian nationality of the so-called "banyamulengue" and to the possibility of their armed reaction (see paras. 110 to 116). A little more than a month elapsed before the events described later on in this report occurred.

Coordination between the Special Rapporteurs for the Great Lakes countries

15. In their respective reports, the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/1996/4/Add.1, para. 121) the Special Rapporteur on the human rights situation in Burundi (E/CN.4/1996/16, para. 170) and the present Special Rapporteur (E/CN.4/1996/66, para. 138) advocated the establishment of close cooperation between officials responsible for the human rights situation in the region. In welcoming this suggestion, ACDH convened a meeting of the three Special Rapporteurs on 18 and 19 January 1996 (see E/CN.4/1996/69).

16. The three Special Rapporteurs had a further informal working meeting on 28 May on which no report was prepared but at which HCHR proposed a joint mission to these three countries, which could not, however, be undertaken for financial reasons.

17. In view of the extent of the conflict in the region, the Special Rapporteurs issued a joint statement, agreed upon by telephone, in which the authorities of Zaire were called upon to avoid any incitation to violence, to guarantee the security of the inhabitants of their territory and to resolve the problem of nationality in accordance with international law. The international community was requested to take steps to prevent the humanitarian catastrophe that was in the making, to initiate a dialogue between the parties and to emphasize the need to convene a special session of CDH to analyse the general situation in the Great Lakes region.

C. The Government of Zaire and the Special Rapporteur

18. The recommendation addressed to the State television corporation in April that it should refrain from mentioning the Special Rapporteur's report to CHR, the delay of five months before the Special Rapporteur's visit was authorized, despite two reminders, the failure to receive authorization for the mission to Kivu, the difficulties encountered in establishing contact with the authorities in Kinshasa, as well as the warning by which the invitation was accompanied, all reveal the Government's suspicion of the activities of the Special Rapporteur who is accused of displaying a lack of objectivity and

harbouring preconceived ideas. As much was indicated, in the frank and cavalier spirit typical of them, by Kamanda wa Kamanda, the Minister of the Interior and Deputy Prime Minister, and Salomón Tudieschi, human rights representative in the Cabinet, who in addition complained that the Special Rapporteur was failing to report progress. When the Special Rapporteur pointed out that the scant progress made had invariably been reported (see paras. 15, 187, 209 and 251, among others, of the first report and paras. 30, 46, 51, 63, 87 and 131 of the second), he was told that progress should be evaluated not in relation to the previous year but in respect of the situation prior to April 1990, when the transition to democracy had begun. The Special Rapporteur does not share this view - although he recognizes the progress implied by a change from a State party regime to a multi-party system - which would result in paralysing progress in an area where it should occur every day, in a continuing and uninterrupted fashion.

19. In point of fact, the accusations levelled against the Special Rapporteur are the same as those that are usually directed against Special Rapporteurs by Governments in whose countries the situation, in the view of CDH, reveals a consistent pattern of violations of human rights, in the words of paragraph 2 of Economic and Social Council resolution 1235 (XLII).

20. The Special Rapporteur, in a demonstration of his objectivity, suggested to the authorities a number of measures that could be implemented only by their political will, such as (a) the pardon of all those who had been sentenced judicially to death and who had been awaiting a Presidential pardon for a number of years and (b) genuine and frank access for all political groups to State radio and television.

21. In addition, the Special Rapporteur offered to annex to his report an account of the alleged progress made. Unfortunately the suggested measures were not adopted, nor was the idea of the suggested annex accepted.

22. The Special Rapporteur addressed to the Government seven communications - of the many others received - containing allegations of 115 cases of human rights violations. He also took urgent action in eight other cases, sometimes together with the other Special Rapporteurs.

23. Yet neither the author of this report, nor the Special Rapporteur on extrajudicial, summary or arbitrary executions, nor yet the Working Group on Arbitrary Detention and Forced or Voluntary Disappearances received any reply.

D. Office of the High Commissioner for Human Rights in Zaire

24. In his first report, the Special Rapporteur proposed the establishment in Zaire of an office consisting of two experts to monitor the observance of human rights, provide the Special Rapporteur with information and offer technical assistance to Zairian civil society and the State (E/CN.4/1995/67, para. 277). The Commission decided to study this proposal which the Special Rapporteur emphasized in his second report (E/CN.4/1996/66, paras. 9 to 11 and 134).

25. Following intensive negotiations between ACDH and the Government, an agreement on the subject was signed on 21 August, and on 10 December the Office was inaugurated symbolically, in the presence of the Minister of Justice.

E. Zaire's international obligations

26. The first two reports mention the international treaties to which Zaire is a party and refer to the anomalous situation prevailing in respect of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Events proved the Special Rapporteur right, and on 18 March Zaire finally deposited its instrument of ratification, although without making the declaration referred to in article 22 concerning communications from or on behalf of individuals.

27. The third periodic report due in 1988 under the International Covenant on Civil and Political Rights has not yet been submitted and the observations of the Human Rights Committee on the first and second reports of July 1990 are no longer valid in view of the transition initiated in 1990.

28. The last part of the initial report to the Committee on Economic, Social and Cultural Rights, due in 1988, has not yet been submitted, nor have subsequent reports.

29. In 1995 (see the second report, para. 12), reports 3 to 9 were submitted to the Committee on the Elimination of Racial Discrimination (CERD). In 1996, report 10 was submitted, and all were discussed by CERD in August (see A/51/18). The Committee regretted that the reports contained no concrete information on the practical implementation of the provisions of the Convention (paras. 510 and 529-535).

30. In view of events in Kivu, it is worthwhile pointing out that Zaire is a party to the four Geneva Conventions of 1949 but to none of the Protocols additional of 1977.

II. GENERAL BACKGROUND INFORMATION

31. General background information on Zaire, its institutions and political development may be found in paragraphs 23 to 84 of the Special Rapporteur's first report and paragraphs 15 to 22 of the second. A number of basic facts are presented below:

(a) Its population of over 40 million comprises about 450 ethnic groups - some of which are called indigenous and others being the result of the voluntary or forced migrations that took place before or during the colonization period - who speak more than 200 languages (four official and one national). Zaire has been independent since 1960 and has been governed since 1965 by Marshal Mobutu Sese Seko;

(b) On 24 April 1990 the transition to democracy began, culminating in the acceptance of a multi-party system and a pluralist CNS. When it came frustratingly to an end, the executive branch of government remained in the hands of President Mobutu and a Prime Minister elected by HCR-PT belonging to a political family other than his own, namely, the opposition. This scheme of

things eventually and inevitably resulted in a schism of the democratic sectors - one sector to which the Prime Minister belonged and the other that did not consider itself represented by him. These authorities and HCR-PT - not elected - were supposed to lead the country to democracy before 9 July 1995, a date that was extended by two years;

(c) None of the present authorities have been elected and the mandates of those that were (Head of State and certain members of HCR-PT) expired in 1991;

(d) The hard fact remains that real power is in the hands of President Mobutu owing to his discretional control over FAZ and the police, all of whom enjoy unlimited impunity. 1/

National Human Rights Institution

32. CNPPDH, in which NGOs, universities and churches were invited to participate, was created on 18 May 1995, as indicated in the second report (paras. 21 and 135). CNPPDH was completely unknown to the population at large and it was mentioned only by the Minister for Foreign Affairs and the Prime Minister in 1995, when they said that it would be independent and governed by the principles set out in Commission on Human Rights resolution 1992/54 and General Assembly resolution 48/134.

33. CNPPDH was actually established over a year later, on 29 May. The Special Rapporteur talked with three of its members and consulted a large number of NGOs concerning its composition, powers and functioning.

34. The National Commission has 22 members, half of whom are State officials (members of ministries, judges, etc.) and the other half representatives of professional, entrepreneurial, trade union, church and other groups. However, it was said that many of the latter, including Pastor Luntandila Ndala Zafu, its Chairman, who is a member of the Board of Directors of MPR, have links with the Executive.

35. NGOs do not feel that their participation is welcome. The Decree establishing CNPPDH mentions the 20 State and NGO representatives but not the two representatives of the Comité des droits de l'homme maintenant (CDHM), a prestigious category II NGO which was not informed it could propose names and was not invited to the opening. When CDHM learnt of the Decree it presented two candidates but only received an "acknowledgement of receipt". AZADHO and VSV were then told that the plenary would designate members of the NGOs; no further information on the matter has been forthcoming.

36. NGOs dealing with human rights matters are also questioning one of the Vice-Chairmen, who says that he is the Chairman of the Zairian section of Amnesty International, a section that is not recognized by its home office and which, moreover, could not as such take action in the country.

37. Three directors complain about the lack of resources, since CNPPDH alone possesses certain facilities donated by a European embassy. The journalist Bokoko Maurice Blondel is of the view that these resources will not be

provided by a Government that is violating human rights. He added that CNPPDH was not received by the Prime Minister and that "it is incredible that I have been unable to travel to Kivu where an armed conflict is raging".

38. Not even the people are aware of what CNPPDH is doing.

III. HUMAN RIGHTS AND DEMOCRACY

39. The Special Rapporteur has emphasized the close relationship between respect for human rights and democracy which, in his view, is in itself a human right. He has expressed regret that agreements reached without the participation of the people might postpone the transition to 1997; he has pointed out that confidence in the political classes has been lost because of their failure to implement the directives of CNS and that, during the first 8 months - out of a total of 24 - of the extended period, only one of the prior requirements for elections has been satisfied, namely, approval of the Law on the establishment of CNE in an atmosphere of complete national indifference. He has called 1995 a "lost year" for democracy and maintained that the programme of October 1995 "is already behind schedule for 1995, and it would be unrealistic to try to organize three elections in less than four months in 1997" (paras. 57 to 62 of the second report).

40. It appears that 1996 is also a lost year - and not only because of the conflict in the east, which began in September, since the slippage began before then - and that once more the Zairian people will be frustrated.

41. According to the 1995 timetable, CNE was to have been established in October but was actually set up in January 1996, and elected its officers only on 18 March. The work of harmonizing various drafts of the constitution was to have begun in November 1995, but it was only in July that HCR-PT was convened to discuss a text that was approved in October 1996. Moreover, the training of persons responsible for conducting the electoral census was to have begun in December 1995 but nothing has been done so far, etc.

National Electoral Commission

42. The establishment of CNE represents the only tangible progress made towards holding elections. However it has not received financial support from the Government; it has belied the expectations of society; it has failed to make the headway anticipated and it has not drawn up a realistic electoral timetable. Yet what is most serious is the mentality of its members.

43. As regards the first point, its Vice-Chairman Kasongo Nyamvie Tambu stated that in October the Government had made available only 7 per cent of its budget (14 per cent on 10 December), which was inadequate to enable it to perform its functions. Nor was the Prime Minister's offer of $1 million on 16 October ever acted on.

44. With regard to the second point, the NGOs interviewed stated that, in agreement with CNS, CNE was to have been established by society at large and not by the political parties. Moreover they added that "all the members of CNE were appointed because of their personal connections or because they were militants or clients of politicians, and do not represent civil society: there are 22 mobutists and 22 tschikesedists, so that CNE is simply another

body of the political class". Such was the disillusionment that in May 1996 the Independent Electoral Commission was established, followed by CENSURE-Z, to inform the population of its rights and to monitor the electoral process.

45. CNE stated that the law does not require representation of civil society, that its members guarantee its independence and that many of them are not political militants and represent social bodies, "so that after CNS civil society was divided into pro-FPC and pro-USORL factions".

46. On balance the amount of progress achieved is discouraging: the interminable debates that take place in Parliament are repeated in CNE, as demonstrated by the two months required to elect its bureau and the failure to establish regional commissions (that of Kinshasa was set up in August). Moreover, the extensive discussion of basic texts (census, referendum and elections) is out of all proportion with the length of the transition period.

47. On 17 April CNE drew up a timetable that was to have begun in November with the census which, however, has not yet been conducted, and the referendum that was to have been held on the constitution in November was postponed to February (and will be difficult to carry out). This was to have been followed by general elections in March 1997 (presidential and parliamentary), June (provincial) and July (municipal). No one found it surprising - and what is even more serious - nobody could have cared less - that on 17 July the Chairman of CNE suggested that it was uncertain that the transition period would end in July 1997. Owing to the armed conflict in the east the pilot registration of electors was postponed to January. CNE was studying a new timetable at the time this report was being concluded.

48. What the Special Rapporteur finds more disturbing, however, is the mentality of CNS and the political class. The first thing its Bureau said was that "Zaire has done what the international community requested of it, namely, it has approved the relevant legal texts and a financial contribution. Now the ball is in the court of the international community, which should provide the necessary funds." It would appear that, in the minds of political leaders, democratization and the establishment of a regime based on the rule of law and ensuring respect for rights and freedoms is simply a response to external pressures and not the moral and political obligation of Zairians.

49. CNE's shortcomings led its Vice-Chairman Georges Nzongola Ntalaja to dismiss, for similar reasons, the desire expressed by the less politicized sectors for greater participation by civil society.

The constitutional debate

50. In October, HCR-PT approved a draft constitution on which a referendum is to be held. Two opposing views emerged: whereas the democratic elements stood up for the drafts and ideas of CNS, many of them were rejected by elements close to the Government. Generally speaking, the views of FPC won the day. As a result, the regime will be of a semi-presidential nature and not parliamentary as desired by CNS. The Prime Minister will be elected and appointed by the head of State from among a list of names proposed by the majority. He may, moreover, be removed by the President (according to the CNS draft he would be elected by Parliament and could not be dismissed by the

President). Moreover, the federal system agreed upon by CNS will be denaturalized and the name of the country will be Federal Republic of Zaire and no longer Congo. 2/

51. The Special Rapporteur was informed that only for cosmetic reasons was it stated that a referendum would be held on the CNS draft.

52. The Law concerning the referendum on the constitution, which is to take place in February, was also approved. The Electoral Code also has to be approved; this will be done following the referendum on the constitution.

53. Unfortunately there has been no national debate on the problem of the nationality of persons deprived of it by the law of 1981 or on measures to prevent refugees supplied with identity cards taken from expelled Zairians from voting illegally (E/CN.4/1997/6/Add.1, para. 126 (c)).

Violations of parliamentary immunity

54. In dealing with various cases of human rights violations in section IV, the Special Rapporteur draws attention to certain instances of violations of parliamentary immunity. The persons concerned had invariably adopted a critical attitude to the Executive, regardless whether they were members of the opposition or the political family of the head of State. The Special Rapporteur considers these violations to be particularly serious since they reflect an autocratic spirit incompatible with a process of transition to democracy, and call in serious question the future of the eventual State based on the rule of law.

55. Furthermore, on 6 March when the opposition was holding its conference in the Palace of the People - the seat of HCR-PT - those present were beaten by soldiers without regard for their parliamentary status.

IV. CIVIL AND POLITICAL RIGHTS

56. The Rapporteur made special inquiries to determine whether any social sectors detected progress in the human rights situation. Neither the victims, nor the human rights workers, nor yet the authorities reported much improvement. The authorities mentioned only the establishment of CNPPDH and CNE, a subject already discussed. The Rapporteur also notes as one legislative advance - though regrettably not yet translated into action - the adoption of the Press Act by the Transitional Parliament, a matter which will be discussed below.

57. The report on the subject which the Government had promised him never reached the Special Rapporteur. Except for the authorities, all those interviewed within and outside the country were unanimous: there has been no progress as regards respect for the right to life and to physical and mental integrity, nor as regards freedoms. There has even been some regression. Impunity holds sway.

58. The following paragraphs list specific cases of human rights violations which occurred during the period under review and should be added to those covered by the report on the mission to Rwanda (E/CN.4/1997/6/Add.1). The legal background is dealt with in the previous reports.

A. Right to life

Death penalty

59. In a reply from the Procurator-General received when the report for 1995 had already been distributed, on cases transmitted in that year, it is stated that the perpetrators of the murder of the priest Edouard Grass were sentenced to death at first instance, but that the sentence is under appeal.

60. It is also reported that Kamana Kadiri Emmanuel was sentenced to death for murdering the secretary of the Governor of Southern Kivu, but that a new trial has been ordered.

61. On 2 August soldiers killed a taxi driver in Kinshasa for not handing over his vehicle to them. Three days later, to appease the indignant public, a court marshal sentenced the perpetrator to death and his accomplice to five years' imprisonment.

62. These cases show that the death penalty is fully in force, and the soundness of the advice given to the authorities to grant reprieves. The penalty has not been carried out for a long time, but those sentenced to it are numerous.

63. The Zairian authorities habitually cite this severity as exemplifying their effort to put an end to impunity.

Political assassinations

64. No crimes of this kind were reported in 1996.

Enforced disappearances

65. None were reported.

Arbitrary deprivation of life by excessive use of force in repressing crime

66. Examples of this kind of offence are the following cases transmitted to the Government: (a) Tembo Kavasiva, killed on 11 April at Bukavu by police; (b) Mindeze Niyetegeka, murdered on 26 April by military personnel in the Virunga district, Goma; (c) Muhambikwa Wetwamai, a pregnant woman killed by a serviceman who raided her house on 1 June, also shooting and wounding her husband.

Arbitrary deprivation of life through abuse of power shielded by impunity

67. Plunder as a means of livelihood by servicemen and members of the security services, shielded by their impunity, is the most frequent cause of offences against life, as has been described in previous reports. Among the cases transmitted were those of: (a) the nun Corazolle, victim of a raid by servicemen and plainclothes police on the Kimpangu Convent, which they entered under false pretenses (23 December 1995); (b) Vumilia, executed in May by the serviceman known as Kokorico, who was shielded by being posted elsewhere three days later; (c) Lazare Nduka, Malenda Buhika and Daniel Llienda (only 13 years old), shot dead by members of the Civil Guard on 7 February at

Camp Luka, Kintambo; (d) On 16 May Doudou Tshiyoyo Lumu Badisanj was executed by members of SARM entrusted with guarding the UNDP premises in Kinshasa, for having reported the names of those who stole vehicles belonging to that agency; no progress has been made with the judicial inquiry; (e) On 2 August Nzuzi Misidi was murdered in Kinshasa by Corporal Manima Luzolo for refusing to hand over his vehicle; (f) On 10 September Luzitu Kika was mortally wounded by a commando led by the Civil Guard member Muduangwefa for having collected a debt. The court closed the inquiry.

Death by torture

68. Torture has not decreased. The Special Rapporteur has not only seen photographs of tortured persons, but also saw at the ETAG detention centre in Rwanda six persons who were arrested and tortured in Zaire and then expelled to its neighbour country with which they have no links at all (E/CN.4/1997/6/Add.1, para. 97). The cases of death from torture - among the many known to the Rapporteur - transmitted to the Government are those of (a) Sadi Mako, tortured by the Civil Guard, Kinkole Section; (b) on 28 January, several Bahunde peasants, arrested at Mweso by Sub-Lieutenant Katita and his squad and taken to the headquarters of the eighth district, at Goma. Among them, Kamulete Ngabo and Byamungu Baroki died, while the 15-year-old girl Kahima Bakulu was shot dead by Corporal Ilunga Fabien and her corpse flung into the river Mweso. Other detainees were also tortured; (c) on 20 September in Kinshasa, Kabungulu Mutundu Baudouin, and in Beni, tortures inflicted in the Sarayevo cachot of the Civil Guard for a whole month; (d) on 31 July Jules Kasholo Munyali and Kalume Kitonge were arrested in Bukavu with two other young persons and put in a cachot at Kavamu, where they were kept without food for six days and tortured. On 3 August they were burnt with a hot iron on the hands and feet, allegedly by order of the judge trying their case. On 6 August Jules Kasholo Munyali died, and on 8 August Kalume Kitonge; (e) on 31 January the serviceman Mukini, who was being held at the Ndolo military jail, died.

Deaths through failure to perform the duty to protect life

69. These cases come under the head of failure to perform the two duties laid down in the International Covenant on Civil and Political Rights to guarantee for all persons their human rights (art. 2) and protect their lives (art. 6), a subject discussed in previous reports. 3/

70. The cases of this type of offence committed in the Northern Kivu region are described in the report E/CN.4/1997/6/Add.1.

71. We must also consider other kinds of failure to meet the obligation to provide protection, such as deaths in prison from illnesses left without attention, as happened on 15 March at the Makala central prison in Kinshasa when two detainees, Kibungu Boki and Lulembo Bukala, died from diarrhoea.

Deaths from failure to perform the duty to protect life during armed conflicts

72. The reports on cases that may be considered as serious infringements of the Geneva Conventions are dealt with in section XII.

B. Right to integrity

73. The Special Rapporteur has the duty to denounce rape of women detainees, one of the most abject forms of torture. Among the cases reported in 1996 were those of: (a) Victorina Sabini, arrested on 11 May in Goma and taken to Kinshasa, where she was raped by nine SARM agents and then, upon their orders, by other prisoners, as well as undergoing other tortures; (b) three women who asked to remain anonymous detained at the end of November 1995 in SARM premises in Goma, where they were raped and beaten for several days.

74. Other cases of torture not resulting in the victim's death were those of: (a) in January, Luanda Kibako, Bahati Dieudonne, Asimwa Maligarerwa, Alira Kubuya, Muhindo Mawazo and Bonane Bandu, Bahunde peasants from Mweso, belonging to the same group as two others who died from torture and a girl who was executed. They were released only on 8 May; (b) Mbaire Lubutu, arrested on 15 June at Korotshe by military personnel engaged in the Kimia operation; he was tortured at Sake and released after five days; (c) Kabanba Citwara and Bahati Kanyama, at Beni between 31 July and 6 August; (d) nine Banyamulengue women, arrested on 9 January near Uvira while they were working on a building site, by order of the Zone Superintendent who refused them the right to work. Some of them were suckling their babies and they were all beaten and forced to abandon their children; (e) Mrs. Abdou, tortured at Katindo on 18 February by SARM personnel, who also robbed her; (f) similar treatment inflicted on Mrs. Sifa on 8 March at Mikeno, Goma; (g) 11 vendors at the "23 October" market, Kisangani, arrested and tortured by the Civil Guard on 18 April for refusing to pay a tax; (h) Munva Ngabu, arrested on 2 January at Isiro by the Civil Guard and burnt on various parts of her body; (i) on 29 May Chryson ihambambuka, arrested and tortured in the SARM cachots at Nyongera; (j) on 14 March, Mr. Moni and Mr. Opetabu, tortured by two soldiers of the Civil Guard in Upper Zaire.

75. Situation of the prison population. Despite some progress here and there, the prison situation is no different from that described in previous reports. It is praiseworthy on the part of Prime Minister Kengo to have ordered the closure of a number of jails for failure to meet standards, but less so that they should have been opened shortly afterwards with no material improvement of their infrastructure.

76. An AZADHO study dated 28 May on the Mbenseke-Futi prison for juveniles reports improvements in the diet, thanks to efforts by the Ministry of Justice. Nevertheless, it states there has been no electricity for four weeks and no water for three. The crop field is used as a shooting range for the army. Health conditions are the biggest problem. No medicines have been delivered to the establishment since 1991. Care is provided only at the request of members of religious orders. The establishment's school is also attended by children from the neighbourhood who are not delinquents and the premises are in a ruinous state. The cost of schooling is charged to the parents.

77. It was stated that women prisoners in the Tshiamala prison, Kisangani, are authorized by the police to go out and prostitute themselves, and must share their earnings with the warders. There are no workshops and there is no medical care.

78. According to BAP (Prison Assistance and Surveillance Office) only the Bukavu Central Prison, in Southern Kivu, has some beds. Everywhere else (Bukavu itself, Uvira and Katana) the inmates sleep on cement floors or on the ground; the toilet facilities are filthy.

79. A report by three VSV human rights workers arbitrarily imprisoned in October in a SARM cachot in Kinshasa (see para. 104) is revealing as to the treatment of the inmates there: inhuman and cruel conditions; constant ill-treatment, to the point of slavery; overcrowded cells (up to 19 inmates); lack of beds; access to the toilets depending on the warders' mood; mental, though not systematically physical torture.

C. Right to security of person

80. The Special Rapporteur has paid particular attention to this right (E/CN.4/1995/67, paras. 156-159 and E/CN.4/1996/66, paras. 75-79), which is bound up with all the others, because it is one of those most seriously violated in Zaire. The cases described might well have been put in other sections, but the variety of rights infringed in each of them is such that it has been decided to include them in this part. Reports say: women were arrested and tortured in order to be robbed; military personnel came into the house, beat its occupants and robbed them; she was released after paying the person who arrested her; they fired at him for not taking a member of the military in the taxi; servicemen made an armed raid on the house; the soldiers fired at the group in the market place; the members of the Civil Guard carried off more than 80 bicycles they found; they made us pay an illegal fine; they shut us up in the church to loot our houses; I had to hand over three goats and my harvest; they raided the medical centre and took away all the instruments and medicines; they beat him until he told them where the dollars were; they attacked him and raped his wife and daughter; they took away the priest who was saying mass because he said "supposing that Mobutu dies one day"; they put up barriers to stop people passing and demanding money for letting them through, 100,000 new zaires at some barriers and 600,000 at others; etc.

81. The victims in these cases included: the priest Leon Iwele (4 February); Richard Mapinga Nguma, pastor of the Branhamist Church; Dieudonne Bondele Nakajeni (27 August, Isantuka); Raphael Ntandianga Mwenabantu (23 June, Kalamba-Mbuji); Mr. Mondiemba and his son Tajoe, aged 10 (7 August, Bolikito); Mr. Maurice (9 April, The Volcanoes, Goma); a woman surnamed Sinankudu (16 April, Mangobo); Mr. Musombolwa (19 April, Mikeno, Goma); Mr. Ruenze (25 April, Mikeno, Goma); Mr. Lukineho and Mr. Shengoko (30 April, Goma); Adriano Egwa (21 June, Ngevaya); Pierre Kiminu and his wife (1 January, Kinshasa); Jean Kalema Diata, AZADHO representative (25 February, Lufungula camp); Mazaya Leta, Kamuma Fudi and Mayaganla Mikaba (25 March, Gungu); and many others.

D. Right to liberty of person

82. The evidence shows that the right to liberty of person, enshrined in articles 3 and 8-11 of the Universal Declaration of Human Rights and articles 9 and 10 of the International Covenant on Civil and Political Rights, continues to be flouted. Arbitrary arrests are made easier by the

non-existence of habeas corpus and by the anarchy that reigns in the functions assigned to the police services, all of which are empowered de jure or de facto to arrest people.

83. An instructive case of arbitrary detention is that of four crew members of an Air Liberia cargo aircraft which was chartered by various NGOs, such as CARE Australia, OXFAM and CARITAS, to convey humanitarian aide to Goma and which was also under contract to another undertaking to send a cargo of military caps to Uganda. On 26 July, during its stopover at Goma, the aircraft was raided by Zairian military personnel and its pilot and crew detained for four months without any charge being brought. This was done solely in pursuit of internal and external political objectives: to prove that the international community - NGOs and intergovernmental organizations, all alike - is involved in attacking Zaire; that it supports the Government of Rwanda; and that Zaire is not responsible for the arms trafficking in the refugee camps of which the Security Council accuses it.

84. The arbitrariness of the proceedings became evident with their release, for they were freed on the day of a visit by the Prime Minister to London. One of those who were detained is Scottish.

85. Another arbitrary act is the very long deprivation of freedom inflicted on Leonard Nyarubwa, Federal President of the PANADI in Kivu, detained in Goma since 27 July on a charge of inciting the population to disobedience and rebellion.

86. The Special Rapporteur transmitted the following cases to the Government: (a) Barthelemy Kabila Kabule, Executive Secretary of the Institute of Studies for Democracy and Development (Institut d'études pour la démocratie et le développement), arrested on 13 November 1995 at Kintambo by SARM; he remained in custody for 40 days without being brought before a court; (b) Sebastian MP'ana, Jean Roch Samba and Nikbiaamba Bukaka Mambueni, arrested on 9 January in Kinshasa by SARM personnel for taking photographs of the victims of the previous day's air accident and released with no charges brought between 48 hours and 7 days later; (c) Leon Baykukya Takaishe, Director of Legal Assistance for the Defence of Human Rights (Assistance juridique pour la défense des droits de l'homme), arrested in Beni on 10 May for sending a letter about the human rights situation to the Procurator-General of the Republic; (d) Steve Mbikavi, Gaby Kiamusuku, Georges Losala, Michel Drumu, Steve Mbikayi, Ewolo Dande Mbongo Mbumba Muntu ne Mwine, Dianfutisa Luweso, Longono Afo Mbongo and Mapipi Motimana, arrested in Kinshasa for trade union activities on 4 June; (e) 19 peasants from Rutshuru, held from 9 January to 18 May at the Makala prison, Kinshasa, without any charge being brought; (f) 41 blind persons from the Mama Mobutu Institute for the Blind (Institut Mama Mobutu pour aveugles), arrested on 24 February by gendarmes for protesting against the Director; (g) Mulumba Tshishiku, Tshiongo Masudi and Mr. Edumba Songi, activists in the "Toges noires" organization for the defence of human rights, arrested by military personnel on 3 September for their professional activities; (h) Paluku Mahiwa, Kabuyaya Kihundu and Mr. Kayuyu, local leaders or connected with them, arrested on 1 June in Lubero; (i) Richard Ilunga Kitwa, Paul Mumba, John Numbi and Mr. Mwepo, directing members of the UFERI, arrested on 16 November in the 9th military district and, in the case of the latter two, transferred to Kinshasa; (j) the union leaders of the Directorate General of Taxation, Mopipi and Wolo, arrested on

8 August by the Civil Guard by order of the Director Mongbondo for incitement to strike; (k) 16 and 17 July saw the arrest in similar circumstances of Albert Mopiti, Onaputa Mudimbi, Lubanda Manima, Salemani Mashaka, Toussaint Kilumdu, Mvula and Nkelefa, leaders of the "Solidarité/DGC" trade union. They were released without having been brought to court.

87. We must also mention the cases of the parliamentarians Bavela Vuadi, arrested on 10 January on the occasion of a memorial mass for the victims of the air accident that had occurred 48 hours previously, for writing to the Head of State charging him with responsibility for it; Etienne Tshisekedi, arrested at his home on 4 June in connection with a student demonstration; and Joseph Olengha Nkoy, arrested by order of the Procurator-General of the Republic under powers delegated by the Minister of the Interior, in pursuance of Decree-Law 1 of 1961, for a press conference held at the headquarters of his party.

E. Right to privacy

88. Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights establish the right of every person not to be subjected to arbitrary interference with his privacy, family, home or correspondence, the additional right to the protection of the law against such interference or attacks also being laid down.

89. Attacks on the home are daily occurrences and have been highlighted in all the reports in the sections dealing with the right to security. The opportunity is now taken of reporting that interference with correspondence - not dealt with in prior years - is another form of violation of human rights in Zaire, as illustrated by the following cases: (a) Colonel Mebelenga Dakpwetoma, a military attaché at the Italian Embassy, was summoned to Kinshasa, where he was imprisoned at the end of 1995 under the accusation of insulting a superior, a charge allegedly based solely on a letter addressed to his family and intercepted by the security services; (b) an express package sent to Etienne Tshisekedi from London, containing letters, cassettes, videos, etc. was intercepted in Kinshasa on 12 August.

F. Right to a fair trial

90. It is the general opinion that the human right to justice is not respected in any of its aspects, as was stated in the first report (paras. 204-214) and in the second (paras. 91-95). There is no judicial equality between parties, and in conflicts between a member of the military and a civilian, between a rich and a poor person, the outcome is almost always favourable to the former. There are various ways in which the lack of independence of the judiciary has been demonstrated this year.

91. First, there is the instruction given by the Ministry of Justice to the courts to refrain from having recourse to the police to get its decisions implemented, unless it is done through the Ministry of Justice, which will in turn apply for the purpose to the Ministry of Defence.

92. Another example is impunity: although cases can be cited of members of the military punished for abuses of power, they are insignificant in the face of the enormity and daily occurrence of such excesses. AZADHO has protested several times, for example, at the lack of progress of the investigation into the out-and-out massacre that occurred during the PALU demonstration on 30 July 1995. The press releases play up the contradictory claim that the investigation directed against the Supreme Leader of PALU, Antoine Gisenga, is going ahead very fast.

93. Moreover, judges generally do not apply international human rights standards, which are domestic law in Zaire, as was shown at the seminar on this subject held in July in Kinshasa.

94. A judge's salary is about US$ 6 per month. They work in miserable conditions, with no telephone, paper or law codes; the parties must pay the cost of proceedings, and there are judges who, to survive, work in private chambers, which is conducive to corruption. And such cases exist, like that of the Procurator-General of Shaba, accused of collusion with the "cobaltists" and "bombardiers" (metal and vehicle thieves).

95. Lawyers said that the Supreme Council of Justice is not consulted as to the appointment of judges, who, moreover, are often persecuted for political reasons or because of their union activities, as happened to the President of the Kinshasa Court of Appeal and the National Union of Magistrates (SYNAMAZ), Ntumba Katshinga Mukoma and the Union's Secretary-General, Armand Ngola Monga Ambele, who on 28 December 1995 wrote jointly to the Head of State complaining of illegal appointments and were suspended from their posts on 12 January by an Order of the Ministry of Justice.

G. Freedom of opinion and expression

96. On 22 June the new Press Law, No. 96-002, which was very well received by journalists and human rights bodies was adopted after protracted debate. Nevertheless, there is concern because the Act allows for sources to be revealed, in some cases even to the security services.

97. In any case, the main complaint is that the improvements promised by the Law are not yet discernible in practice.

98. The evident freedom of expression in the French-language press and in Kinshasa is not enough to ensure that the Zairian public are well informed. The fact that the recommendation in the 1995 report, paragraph 126 ("there must be a bona fide liberalization of official radio and television, which are currently fiefs of the political family of the President") has not been followed up, is affecting the transition.

99. The nine newsmen who were dismissed years ago for political reasons from the State radio and television have not been re-engaged, despite the efforts exerted on their behalf by the Archbishop of Kinshasa and Minister Kamanda. The Minister of Information is opposed to their reinstatement.

100. Despite the declarations of Prime Minister Kengo that the press is not to be harassed, because he hopes it will do its own cleaning up, many attacks on freedom of expression have been reported to the Government, revealing the

precarious nature of this right. The most notable cases were those of: (a) Paulin Tonsele, journalist on the Tempête des Tropiques, arrested by the military on 5 July for writing an article on the banned UDPS march; (b) Bonsange Yema, editor of the newspaper Mambenga, was summoned on 7 March to appear before the Paz Assossa court for an article on the functioning of the Division of Finance and Budget of the Ministry of Defence; (c) the same publication was suspended on 20 April for six months; (d) Nouveau Débat and L'Arme were banned on 28 June; (e) Bonne-Année Muhindo, the local radio watchdog, was beaten by military personnel in Goma on 4 October and left dying, as a reprisal for an article on the living conditions of the population; (f) the Zaire Press reporter Sumaili Kilu Kiswaya was abducted on 25 February in Kinshasa by security officers and subjected to an interrogation about his professional activities; (g) Lenga Longo, public relations officer of Ouragan Afrique, in company with Kiala Buluku, was arrested in Kinshasa on 4 July by military personnel, who confiscated the vehicle used for delivery of the publication and released them 48 hours later; (h) Ladi Luya, editor of the newspaper Palmarès, was arrested on 18 September in Kinshasa for publishing articles on the health of the Head of State; (i) on 7 October the Tempête des Tropiques reporter Gustave Babamanibo was kidnapped in Kinshasa and robbed of all his money.

H. Freedom of association

101. Once again the human rights NGOs were attacked by the authorities. This was not in reaction to specific events, but reflected an endemic suspicion of nefarious political activities or subservience to unlawful interests. The Minister of the Interior himself told the Special Rapporteur that "many NGOs are extensions of political parties. They bring cases first to the attention of the international community and not of the Government". On 8 June two high-ranking officials of the MPR of Upper Zaire and a member of its National Directorate, speaking in the Lumumba Stadium, referred to the NGOs as "sick children who must be vaccinated so that they can be healthy adults, like MPR". On 13 September, in Beni, the commanding officer of the Civil Guard wrote a letter (ref. 197/GC/EN/COMDT/BTB/96) to AZADHO warning it that he would take action if it continued its revisionist activities.

102. Such actions not only constitute a violation of the right to freedom of association, but also, as regards the NGOs upholding human rights, impose a very serious restriction on the right to protection, to freedom of opinion and expression and to security of person, and on other fundamental rights.

103. Especially disturbing is the repressive action taken against organizations concerned with education for democracy, at a time when preparations for important electoral processes are in full swing.

104. (a) One of the most serious occurrences was the arbitrary detention on 28 October, on SARM premises in Kitambo, Kinshasa, of the President of VSV Floribert Chebeya Bahizire, the coordinator Haroun Mbongo Ngudja and the militant Benjamin Bashi Nabukuli, for the lawful act of seeking information on events in Kivu; they were not released until 2 November. The matter is serious inasmuch as CHR, in its resolution 1996/70, supported those who cooperate with the United Nations, which applies to the VSV in general and to its management in particular. It should be added that there was no legal basis for the arrest, whose duration exceeded the legal time-limit, and that

they were unlawfully denied the right to receive visits; (b) Musitu Wanzio Flavien, secretary of the Sub-Committee on Justice and Peace of the Notre-Dame de la Sagesse University parish church, arrested on 3 September for having organized, jointly with the Electors' League, a conference on democracy and the elections; (c) Kyalosho Kalunda, Donatien Mazambi and Lambert Mbunganyi, members of the Action Group for the Development of Human Rights (Collectif d'action pour le développement des droits de l'homme - CADDHOM), arrested in Kamituga on 21 August for publishing the charter of the organization; after being tortured they were released on 29 August upon the intervention of the Minister of Justice; (d) on 3 September a 15-member armed squad headed by Kangayani Movoto, nephew of the Head of State, raided the premises of the Electors' League, threatening the person in charge, Paul N'Sapu, with death and taking away computers, printers, fax machines and many other items. They then went to the house of Cécile Lula, in charge of the women's branch of the Electors' League, whom they tortured; (e) in January the Governor of Upper Zaire ordered the closure of the offices of the Buta branch of the human rights defence organization Friends of Nelson Mandela, on the grounds of absence of legal personality, though what lay behind his action was an unfounded charge of rebellion supposedly committed on 7 January; (f) the President of AZADHO at Idiofa, Bandundu Nicaise Ikutu Amba, after being intimidated by the local authorities, was summoned on 26 March and following days to the gendarmerie and accused of incitement to revolt, the sole grounds for the charge being the action taken by AZADHO to denounce corruption in Kalanganda; (g) Alain Hgende, AZADHO representative in Basankusu, was constantly threatened with death by military authorities of the zone and by the mayor of the town; (h) Didi Mwati Bulambo, coordinator of CADDHOM, was arrested on 25 July at Mwenga, Southern Kivu, and then released on bail. The charge was an article in a CADDHOM publication, Mwangaza, denouncing corruption in the Kamitunga Procurator's Office; (i) Kabanza Tabaro Sylvestre, adviser to the regional development training and exchange programme (PREFED), harassed on 4 December in Kinshasa by SARM agents; other cases are mentioned in the sections on other rights.

I. Freedom of assembly

105. This right was again infringed, the most flagrant cases being: the demonstration by students of the Higher Institute of Commerce, on 11 June in Kinshasa, when the security forces posted at the People's Palace attacked the young people with their now time-honoured ferocity, leaving a teacher and 18 students wounded, and the UDPS march in Kinshasa on 5 July, which could not take place owing to the enormous and threatening police deployment.

J. Right to dignity of the person

106. Dignity of the person is a constant in international human rights instruments. It is the "foundation" of freedom, justice and peace, according to the first paragraph of the preamble to the Universal Declaration of Human Rights; the importance of its recognition is stressed in the fifth paragraph and in article 1, as also in many provisions of the 1966 Covenants.

107. The facts set forth in this section may well be dealt with in others, for they concern offences against a wide variety of human rights. Nevertheless, it has been decided to devote a special chapter to highlighting the utter contempt displayed by the Zairian armed forces for their fellow creatures.

108. In a pastoral letter dated 22 January the Catholic bishops expressed their deep revulsion at the treatment which was accorded to the bodies of the victims of the air accident of 8 January in the Ndolo market, and which scandalized even a people accustomed to death and torture.

109. The same contempt for human dignity is evidenced by accounts concerning a kind of slavery to which people are subjected by the military in Kivu. It has been reported that: (a) "In the Beni zone, Ruwenzori and Batalinga communities, the parachute troops of the 321st Battalion, sent to control the rebels, have gone over to operating as itinerant traders. Because of their own depredations, there are few vehicles on the roads and they cannot transport their merchandise, so they capture men and women and make them carry heavy bundles, on foot, over distances of up to 50 or 80 km"; (b) On 7 August about 20 men and women, captured on the Rwanda-Kirindi road by parachute troops, were forced to take drums of oil to a place over 50 kilometres away, on foot; (c) on 8 September a detainee was made to carry bundles to Bulongo, over 80 kilometres away, where he arrived two days later. To prevent his running away, he spent the night shut up in the prison at Kikura and was sent on his way again the next day. Some of the victims gave their names: Kayonso, Babatwika Nguvikama, Mathe Vagheni, Nbus Naghuma, and others.

110. All these sources state that the civil and military authorities know what is going on, but do nothing to stop it. One source said that "in Beni this has been going on since 1993, though with ups and downs".

V. THE HUMAN RIGHT TO NATIONALITY

111. The Special Rapporteur has again expressed his concern at the violence in the eastern part of the country and his conviction that the land conflict between the so-called indigenous ethnic groups and the Banyarwanda has been exacerbated by political considerations connected with electoral processes and the laws governing nationality. 4/

112. The armed conflict in Southern Kivu arose from similar causes, though it has reached a much higher level of intensity (see section XII). In view of its disastrous consequences, this conflict will be considered in greater detail.

113. However, aside from the problem of Kivu, deprivation of nationality is today a way of punishing political dissent.

A. Legislation prior to 1971

114. Already before independence there were arguments about the nationality of the inhabitants of Kivu. Masisi, Rutshuru, Idjwi Island and other areas belonged until 1910 to the Kingdom of Rwanda-Urundi, at that time a German colony. In 1922 the League of Nations handed over those territories to Belgium, which in 1925 annexed them to the Congo. Later the colonial administration organized the transplantation of persons (see E/CN.4/1997/6/Add.1, para. 19). The transplanted population thenceforth had the same status as those nowadays called "original inhabitants", and accordingly Legislative Decree 25/554 of November 1959 laid down that citizens of Rwanda-Urundi could elect and be elected to councils on the same terms as

Belgians with metropolitan or Congolese status, provided they could prove 10 years' residence in the Congo. While this Decree made no reference to nationality, it did regulate one of the effects thereof: the right to vote and to be elected to public office. On 23 March 1960 Electoral Law No. 13 reaffirmed that a person required Congolese status in order to vote, or 10 years' residence in the Congo to be a citizen of Rwanda-Urundi.

115. Resolution No. 2 of the Brussels Round Table, prior to independence, recognized as Congolese all persons who had already been recognized as such. Some of those taking part in that Round Table were actually children of transplanted persons, sitting as Congolese. This resolution remained in force until 1964, since neither the Fundamental Law of 19 May 1960 nor the Law of 17 June on public freedoms, which were to come into force on 30 June in the Belgian Congo and Rwanda-Urundi, dealt with the subject of nationality.

116. Article 6 of the so-called Luluaburg Constitution of 1964, in accordance with Resolution No. 2 of 1960, declared to be Congolese as of 30 June 1960 all persons one of whose ascendants was or had been a member of a tribe or part of a tribe established in the Congo before 18 October 1908 (la nationalité congolaise "est attribuée, à la date du 30 juin, à toute personne dont un des ascendants est ou a été membre d'une tribu ou d'une partie de tribu, établie sur le territoire du Congo avant le 18 octobre 1908"). The Banyarwanda are Bahutu or Batutsi who were established in the territory of the Congo before that date, and are therefore Congolese by virtue of nationality of origin and not by naturalization. They therefore continued to be treated as such in censuses and elections, and this was confirmed in a Decree of 18 September 1965.

117. The 1967 Constitution does not repeat the wording of the previous one, but article 46 thereof provides that the matter shall be regulated by legislation. Transitional article I maintains in force all such rules as are not contrary to the Constitution. In practice this matter continued to be governed entirely by the Constitution of 1964, and wherever the new Charter referred to "Congolese" (arts. 5, 7, 11, 15, 17, 18, 21, 37 and many others), it was always understood that this meant those whom the previous laws had recognized as such.

B. The laws of 1971 and 1972

118. These rules are criticized for collectively granting Zairian nationality to the Banyarwanda. The Decree-Law, adopted by the Head of State when Congress was in recess, provided that persons originating from Rwanda-Urundi and established in the Congo as of 30 June 1960 were Zairians as of that date.

119. There is no argument about who the author of that Decree-Law was: Bisengimana Barthélémy, a Rwandan refugee who had come to the Congo in 1960 - and was therefore not Congolese because he did not have the 10 years' residence prescribed in previous laws - at that time President Mobutu's Cabinet Director. If the Decree-Law granted "collective recognition" of nationality, it was only to those who, like Bisengimana, were not Congolese, i.e. to those who did not meet the requirements of previous laws, not to those who were already Congolese.

120. The nationality act required under the Constitution was promulgated only on 5 January 1972 as Law No. 002, article 1 of which recognized as Zairian on 30 June 1960 any person with one ascendant who was a member of one of the tribes established in the territory of the Republic of Zaire as defined by its frontiers of 15 November 1908 and subsequent modifications. Article 15 added that persons originating from Rwanda-Urundi who had taken up residence in the province of Kivu before 1 January 1950 and had thenceforth continued to reside in Zaire until the entry into force of the Law acquired Zairian nationality as of 30 June 1960.

121. This Law is consistent with those of the colonial period and those first adopted after independence in that it refers to a period of 10 years' residence in Zairian territory, and at the most it can be argued that under its provisions Zairian nationality is "collectively" taken away from - not granted to - persons of Rwandan origin who arrived in Zaire between 1 January and 30 June 1950. Those transplanted before that date were already Zairians.

122. The 15 August 1974 revision of the Constitution in no way amends the Law of 1972, but on the contrary maintains it in force until it is repealed (transitional art. I). Only the 15 February 1978 revision deals with nationality, but without changing the rules in force, i.e. the 1972 Law: the new article 11 provides that Zairian nationality is unitary and exclusive, and that the legislation shall determine the conditions for its recognition, acquisition and loss. Hence, by what is now constitutional authority, those declared to be Zairians under the Law of 1972 continue to be so.

C. Law No. 002 of 29 June 1981

123. This Law was adopted and voted in a context of pressure resulting from the fact that in Northern Kivu the "original" ethnic groups were in a minority. The Bahunde totalled 15 per cent and could be left with no political representation. The great majority were Banyarwanda.

124. The Law erroneously assumes that the Banyarwanda - whom it considers as aliens - collectively acquired Zairian nationality under Law No. 002 of 1972. This is declared in the statement of reasons, announcing that the new Law expressly abrogates article 15 which had collectively granted Zairian nationality to groups of aliens established in the country. It declares to be Zairian as of 30 June 1960 any person one of whose ascendants is or has been a member of one of the tribes established in the territory of the Republic of Zaire as defined by its frontiers of 1 August 1885, modified by subsequent conventions (art. 4). It could be argued that this provision results in abrogation under the Constitution of Law No. 002 of 1972, and that accordingly the transplanted inhabitants would have lost their Zairian nationality from the date of its enactment and been left stateless, in contradiction with every principle of international law on human rights. Even were this so, the effects of this Law could not extend to the children of transplanted persons born while the latter were Zairians.

125. In implementation of the Law, Decree No. 061 of 1982 cancels the certificates of nationality issued under the Law of 1972.

126. The Law of 1981 is contrary to article 12, on equality before the law, of the Constitution then in force, so in case of conflict the latter must have precedence over the former.

127. CERD in its report expressed the view that the provisions of Law No. 81-002 are contrary to article 5 (d) (iii) of the Convention with which it is concerned (A/51/18, para. 525).

D. The Transitional Constitution

128. The 1981 Law was vigorously debated at the 1991 and 1992 meetings of the National Sovereign Conference, where it was agreed that this matter should be settled so as to prevent Zairian citizens from being left stateless, which would put Zaire among the countries that violate fundamental human rights. Nevertheless, the Transitional Constitution does not solve the problem.

E. Principles of international law

129. Deputy Prime Minister Kamanda is right in maintaining, in a letter to the United Nations Security Council dated 24 October, that the adoption of rules and regulations concerning nationality is a matter subject to the sovereignty of individual States. Nevertheless, the Special Rapporteur considers that international human rights norms place limitations on the exercise of such sovereignty. The Convention on Certain Questions relating to the Conflict of Nationality Laws (The Hague, 12 April 1930) requires States Parties to recognize the laws of other States "in so far as (they are) consistent with (the) conventions" and principles of international law.

130. The first limitation concerns the principle of non-discrimination, which is the basis for all international human rights law and is exemplified by article 55 of the Charter of the United Nations, article 2 of the Universal Declaration of Human Rights, article 2.1 of the International Covenant on Civil and Political Rights, article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination and article 2 of the African Charter on Human and Peoples' Rights.

131. It is discriminatory to deprive a person of his nationality for any cause other than treason or to do so only in respect of the members of two tribes because of events that occurred over 100 years ago.

132. The second limitation is to be found in article 12 of the International Covenant on Civil and Political Rights and article 12.2 of the African Charter on Human and Peoples' Rights, which establish the right to reside in and return to one's own country. Since this right may be invoked only by the nationals of a country, revocation of nationality implies loss of the exercise of that right. Normally - and the case of Zaire is an obvious example - persons deprived of their nationality neither have, nor acquire, another; as a result, such persons are left without the protection of any State.

133. The third limitation stems from articles 1 and 8 of the 1961 Convention on the Reduction of Statelessness, the principles of which may be considered as customary international law and under which Zaire has the obligation to recognize as Zairian anyone born in its territory (see E/CN.4/1996/66, para. 85).

F. The present state of the problem

134. The Law of 1981 and the rules governing its implementation had no practical consequences in everyday life because the Banyarwanda continued to be considered Zairian (passports, etc.). The Law did, however, have important political effects, such as the cancelling of provincial elections in Kivu in 1987.

135. The anti-Rwandan feeling noted by the Special Rapporteur (see E/CN.4/1996/66, para. 26) was increased by the arrival of over 1.2 million refugees in 1994. An HCR-PT Commission, headed by Vangu Mambueni, investigated the impact of their presence. Its conclusions reveal an "ethnic cleansing" spirit, since it is stated that Rwanda has been attempting to acquire Zairian territory and to supplant its indigenous inhabitants since 1985 and that the Tutsi are preparing for a "Hamitic Kingdom" to be known as the United States of Central Africa or the Republic of the Volcanos. All Zaire's problems are blamed on the United Nations, westerners in general, Tanzania (for organizing the Arusha Conference), Burundi and Rwanda; these allegations culminate in a call for the "liberation" of Kivu. The Commission did not permit its members to disagree with its findings; a member who criticized it was first prevented from speaking, then dismissed from his post and deprived of his nationality.

136. The report led to the HCR-PT agreements of 28 April, which were one of the immediate causes of the conflict in Southern Kivu. They called for the unconditional and immediate expulsion of all refugees and immigrants and the revocation of the land titles of immigrants or transplanted persons who had obtained Zairian nationality under false pretences (according to the interpretation of legislation prior to that of 1981, all such persons fell into this category).

G. Deprivation of nationality as a political sanction

137. One proof of the political nature of the nationality problem is the HCR-PT dismissal of four parliamentarians from their posts on the grounds that they were Rwandan nationals or collaborators: Cyprien Rwakabuba Shinga (a Zairian Tutsi who had served as regional adviser for Rutshuru since 1959, provincial minister, Senator, political commissioner in 1975, member of the Central Committee and the State MPR party Disciplinary Committee and, since 1994, National Adviser); Mutiri Muyengo (Hutu) and Rémy Kalegamire (a Havu, and therefore a member of an "original" ethnic group, who had served as municipal and regional adviser in 1958 under the Belgians, MPR parliamentarian and member of the Vangu Commission, from which he was dismissed because of his opinions). The arbitrariness of this action was confirmed by the opinion to the contrary expressed by the HCR-PT Judicial Committee. Opposition parliamentarian Christian Badibangi was also dismissed from his post when it was discovered that, while in exile, he had married a French citizen, thereby acquiring French nationality and losing that of Zaire.

H. Exercise of other human rights

138. Revocation of the right to nationality deprives members of the Tutsi and Hutu ethnic groups of at least two other rights:

(a) The right to reside in one's own country, already mentioned above. The HCR-PT agreements of 28 April entailing the expulsion of all transplanted persons and immigrants, are in flagrant violation of article 12.4 of the African Convention, even if applied to foreigners - which they are not.

(b) The right to take part in the conduct of public affairs, the exercise of which requires a nationality.

VI. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

139. It has already been noted that the country's economic decline (paras. 223-225 of the first report) has had a negative impact on the enjoyment of economic, social and cultural rights, and that it appears that no effort is being made to comply with article 2 of the Covenant on Economic, Social and Cultural Rights, which states that each State Party must "take steps ... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights" recognized therein (paras. 104 et seq. of the second report). Nor have any efforts been made to comply with article 8 of the Declaration on the Right to Development (General Assembly resolution 41/128), which states that States Parties should undertake "all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services ...". This failure to take effective measures was noted by the Committee on the Elimination of Racial Discrimination (CERD), which emphasized that the Government had not even provided information on steps taken to ensure the enjoyment of those rights (A/51/18, para. 518).

140. There are no progress reports. The country remains in a state of abysmal poverty, and the unanimous opinion is that there has been no economic growth. Inflation, which had dropped to less than 500 per cent in 1995, rose to over 5,000 per cent in 1996.

A. Right to education

141. The situation prevailing in previous years remains unchanged. Education accounts for only 2 per cent of the national budget, a figure impossible to reconcile with the stipulation that each State Party must take steps to the "maximum of its available resources". This is borne out by reports prepared by the United Nations Children's Fund (UNICEF), the Ministry of Planning (Ministère du plan) and the Office for the Improvement of Education (Service pour une meilleure éducation)

142. Half of the country's 12 million boys - but only 42 per cent of its girls - attend school. No more than 1.5 million of those children, of whom only 32 per cent are girls, reach secondary school. One factor in this discrimination is the fact that fathers prefer to have boys educated; attempts are being made to improve the situation through UNICEF-sponsored awareness projects.

143. The rate of enrolment among children between the ages of 6 and 11 declined from 70 per cent in 1985 to 55 per cent in 1995. In one school in Kinshasa, it fell from 602 in 1994 to 225 in 1995.

144. On 5 July, the Government ordered the suspension of the practice described in the first report (para. 232) whereby parents subsidized basic education in the public schools (a teacher earns US$ 1.00 per month) and promised to remedy the situation. Unfortunately, on 29 August the Government revoked the order, merely suggesting that parents should pay no more than during the previous year.

145. The Special Rapporteur wishes to point out that, on 9 April, the Prime Minister issued several encouraging instructions concerning the teaching of human rights, including study of the Transitional Constitution, the Universal Declaration of Human Rights and other instruments. On 15 March, he instructed the Ministry of Information and the Press to ensure that radio and television programmes emphasized the fact that "our diversity is a treasure which allows us to speak of national unity" rather than an obstacle to development. However, it has been stated repeatedly that these instructions are not being followed.

B. Right to health

146. Statistics show that no progress has been made; instead, the situation has worsened for lack of appropriate policies. Only 1.3 per cent of the budget is allocated to health. UNICEF reports that the mortality rate for children under one year of age, which was 113 per thousand in the 1970s, dropped to 90 per thousand in the 1980s but rose to 135 per thousand by 1994. Life expectancy, which was 47 years in 1984, declined to 45.4 years in 1995. One quarter of the children under five years of age suffer from severe malnutrition, while 11 per cent of urban and 74 per cent of rural dwellings do not have drinking water.

147. The Government had to deal with a cholera epidemic in March. A study carried out by the Association for the Protection of the Local Heritage of the Bas-Fleuve reported that in this region, in addition to many epidemic illnesses such as cholera and typhoid, there is a serious Acquired Immune Deficiency Syndrome (AIDS) problem and a lack of effective, realistic official programmes to combat that disease in an uninformed population with a 60 per cent illiteracy rate. Similar situations were reported to the Special Rapporteur by NGO representatives in other regions.

C. Right to work

148. Once again the Special Rapporteur must deplore the delay in payment of the salaries of public officials. The Prime Minister's efforts to ensure their regular payment, which initially made it possible to make good the arrears, have since been frustrated. It must be added that when salaries are paid on a monthly basis, the amounts in question are of nominal value in a country where inflation has reached the levels indicated above. The delays in salary payments to public officials have led to various conflicts, the most recent of which occurred on 20 December and involved the employees of the Central Bank.

VII. SITUATION OF CHILDREN

149. The Special Rapporteur wishes to reiterate the statement made in his first two reports with regard to the levels of school enrolment and the exploitation of children; further information is provided in paragraphs 141-144 of this report.

VIII. SITUATION OF WOMEN

150. The statements made in the Special Rapporteur's first two reports (paras. 238-241 and 112-115, respectively) concerning low school enrolment rates for girls (see also above, paras. 141-144 and 146), domestic violence, violence against women - including rape - in prisons and detention centres and lower pay for equal work, remain true. According to a report of the Organization of Christian Women for Democracy and Development (Organisation de femmes chrétiennes pour la démocratie et le développement), women are affected in two ways by the crisis: they have to endure not only the injustices of the dictatorship, but also the burden of tradition, yet most of them claim to be perfectly happy. Women account for 65 per cent of the national illiteracy rate, which stands at 45 per cent for the population as a whole. Only 5 per cent of graduates in the technical fields and 13 per cent of higher education graduates are women. For every 100,000 births, 800 women die in childbirth, yet there has been no decline in the 6.7 per cent fertility rate.

151. The low level of participation by women in political and social affairs, despite the efforts of many churches and NGOs, should also be a source of particular concern to political parties and universities.

IX. SITUATION OF MINORITIES

152. Not all ethnic groups living in Zaire enjoy the same rights. Arbitrary political discrimination exists, as in the case of one ethnic group which is a tiny minority but which predominates because Marshal Mobutu and over 50 per cent of the nation's generals belong to it. There is also discrimination with regard to the effective enjoyment of economic, social and cultural rights as well as civil and political rights, by other ethnic groups, in flagrant violation of articles 2.2, 2.3, 3, 4 and 5 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by General Assembly resolution 47/135.

153. Ethnic groups other than the Banyarwanda also suffer from discrimination. This year, the Special Rapporteur looked into the situation of the Batwa or pygmies; from a strictly historical point of view, it is they who - at least in the east of Zaire - constitute the only genuinely "original" ethnic group, despite the statements made by other groups which claim that distinction as justification for discriminating against those considered to be of Rwandan origin.

154. The Batwa are nearly extinct and live in conditions which fail to supply any of the necessities of human existence. The Special Rapporteur visited a small community of 300 persons in Sake, many of whom had escaped the Masisi massacres. They are organized into family clans and live in conditions of

indescribable poverty at the margins of civilization. Their diet consists of bananas and other fruit and the meat of animals which they hunt and kill with arrows; their dwellings have roofs made of plastic, all of them torn.

155. CERD was also concerned by the situation of the Batwa, but it does not appear to have attracted the attention of the international community. The only known project concerning them is the remarkable work done by a Sake group, the Society for the education and integration of the pygmy peoples; SEIPI (Société pour l'éducation et l'intégration des populations pigmée), which has attempted to help the pygmies find a place in the world. The group has involved them in their own development by providing medical services and helping them to get an education; however, they are not provided with any type of public service.

156. In the words of the SEIPI coordinator, "They must be made to realize that they are human beings with all the rights thereof".

X. SITUATION IN REFUGEE CAMPS

157. Since 1994, one of the most serious problems in Zaire has been the arrival of approximately 1.2 million Rwandan refugees. The Special Rapporteur has noted that those refugees include individuals responsible for genocide and intimidation, particularly former FAR members and interahamwe who (a) intimidate refugees to prevent them from returning home; (b) commit acts of violence against the local inhabitants and inflict serious damage on the environment; (c) make incursions into their home country and Burundi; (d) have fought against FAZ; (e) have also joined them in attacking Batutsi with a view to establishing a "Hutuland"; (f) contribute, by their presence, to an increase in anti-Rwandan feeling. It has also been pointed out that, generally speaking, Zaire has respected the provisions of the 1951 Convention relating to the Status of Refugees, despite certain cases of refoulement in violation of that Convention, and that, except at the beginning of the United Nations-financed ZCSO, the Government has not guaranteed security in the camps. The Special Rapporteur has noted the threats to expel refugees in 1995 and 1996 and the encouraging decision, adopted at the 1995 Cairo Conference, not to expel refugees on 31 December 1995 despite enormous domestic pressure to do so. It has been stated that the principal obstacle to the return of the refugees is the insecurity prevailing in their countries of origin, Rwanda and Burundi.

158. The Government has continued to pressure refugees to return by threatening to close the camps and to order the "administrative closing" of those located in Kibumba and Nyangesi, which were temporarily surrounded by the military in February; by prohibiting religious, political, commercial and educational activities - even UNICEF was forbidden to carry out educational programmes for children; by imposing cutbacks in humanitarian activities, etc. All attempts failed, and only a few refugees returned. Not even the insecurity of the camps, due to the failure to punish the breakdown of discipline in ZCSO, motivated the refugees to return. The threat of expulsion was also unsuccessful: the lack of guarantees in the countries of origin and threats by intimidators in the camps always seemed the greater danger. The measures proposed by UNHCR to encourage return were rejected by both parties: while UNHCR called for continued refugee status for returnees, Rwanda proposed to apply the cessation clause in article 1 (C) of the Convention relating to

the Status of Refugees; Zaire and Tanzania rejected the relocation of refugees and the removal of former FAR members (only about 56 were taken to Kinshasa and imprisoned); and no solution was found to the problem of those who did not wish to return.

159. The whole picture changed with the war in Southern Kivu: after the attack on Uvira by Banyamulengue rebels on 19 October, some 500,000 refugees fled the camps in the area and were located only some time later from the air. Their departure was followed by that of the refugees in Bukavu and, when Goma was occupied by the rebels, by the refugees there as well. As a result of those events, some 700,000 refugees, freed from interahamwe pressure, returned to Rwanda, and the Burundians attempted to reach Tanzania.

160. As from 20 December, over 100,000 refugees were located near Tingitingi and Walikale and another 150,000, including some 20,000 Burundians, in Shabunda (south-western Kivu), of whom, 100,000 were on the roads, having covered hundreds of kilometres on foot in dire need, and while it is assumed that many of them died during the journey, there must be even more who have not yet been located and with whom there has as yet been no contact.

161. Although the Zairian Government insists that humanitarian missions are useless since they only lessen refugees' incentives to return, it maintains that large numbers of refugees remain in its territory. The Bishop of Kisangani reports that the need remains very great and calls for the effective establishment of the multi-national force. 5/

Zairian refugees and internally displaced persons

162. The events which occurred in the two regions of Kivu have resulted in enormous numbers of Zairian refugees and displaced persons who receive little protection from either their Government or the international community. The subject is dealt with by the Special Rapporteur in paragraph 106 of the Addendum to this report (E/CN.4/1997/6/Add.1). The Bishop of Kisangani has drawn attention to that fact, adding that in his region, with the fall of Beni, Butembo and Bunia - the breadbasket of Zaire - and the paralysis of river trade, there is a considerable risk of further population movements, which raise the spectre of starvation in Upper Zaïre.

163. An estimated 40,000 Zairians have fled to Tanzania, but that number has not been officially confirmed.

XI. THE CONFLICT IN NORTHERN KIVU

164. The conflict in Northern Kivu has been covered in the first and second reports (paras. 85-95 and 23-32, respectively) and prompted the Special Rapporteur to undertake a special mission to Rwanda; the report on his visit describes the causes of the conflict and its development up to July. The Special Rapporteur refers to that report in the following paragraphs, which should be read in that light.

165. According to reports, the conflict continued as before until the region fell under Banyamulengue control in late October. Prior to that time, the

violence was primarily the result of interahamwe incursions from the camps in pursuit of the few remaining Batutsi (the majority of the survivors being located in Rwanda) and of continuing exactions by FAZ.

166. Insecurity still prevailed. Contrary to what might be expected, however, the arrival of the rebels lessened the feeling of insecurity, and several witnesses said that "at least now there is no more looting" (see below, para. 186).

167. The indigenous Mai Mai and Banguilima guerrillas have surrendered, though not unconditionally, to the Banyamulengue: it would appear that their long-standing hatred of FAZ and the guerrilla tradition which dates from the 1970s has proved stronger than nationalism (E/CN.4/1997/6/Add.1, para. 47).

168. The camps in Goma and the surrounding area remained almost empty until the end of the year.

169. The situation as regards human rights and respect for the provisions of international humanitarian law is dealt with in the next section.

XII. THE ARMED CONFLICT IN SOUTHERN KIVU

A. Background

170. In his second report, the Special Rapporteur expressed alarm at the new ethnic conflict involving the so-called Banyamulengue in Southern Kivu, who had been denied Zairian nationality and threatened with expulsion as foreigners (paras. 33-37, 123, 129 and 130), together with the refugees of 1994, under the 1995 HCR-PT agreements. With regard to the earlier events in Rwanda, the Special Rapporteur gave warning on 31 July "of the possibility that what has recently been taking place in Northern Kivu may recur in like vein in Southern Kivu" (E/CN.4/1997/6/Add.1, para. 116). Hostilities broke out in late August.

171. The conflict in Zaire has been a source of great international concern since it was feared that it would lead to a humanitarian catastrophe, especially as none of the parties involved - the rebels, FAR, the interahamwe or the Government - were properly respecting the provisions of article 3 common to the four Geneva Conventions of 1949, which should unquestionably have governed the situation.

172. There is little difference between the causes of the conflict in Southern Kivu and those which led to the conflict in the north and are discussed in paragraphs 14-29 of the Addendum to this report (E/CN.4/1997/6/Add.1). 6/

173. The main cause is the colonial heritage, for frontiers were drawn between various colonies regardless of the borders recognized by the "original" ethnic groups, and this situation was aggravated by the transplantation of populations.

174. A second, more recent cause is of a political nature and, as such, could easily have been avoided: the existence of an authoritarian regime in Zaire, which created an artificial problem by depriving of their nationality not only those who had acquired it in 1971, but also those who, together with all other

members of indigenous ethnic groups, had been nationals by birth on the day that Zaire achieved its independence. The explanation of the reasons for the Law of 1981 makes no attempt to conceal the political motivations of the one-party State behind it: "The Act of 1972 shall be revised on the basis of the major political decisions taken by the Central Committee of the People's Revolutionary Movement in respect of the thorny problem raised in the statement made by the founder and Chairman of the People's Revolutionary Movement and President of the Republic at the opening session of that body on 26 March 1981..." 7/

175. The problem remained unsolved until external factors triggered spiralling resentment that was exploited by the elements concerned: the arrival of the Rwandan refugees in 1994 and its consequences, namely, imported violence, the international protection extended even to those guilty of genocide, environmental damage and the preferential treatment of refugees fed latent anti-Rwandan feelings. The political class responded with the Vangu report and agreements calling for the immediate expulsion of all refugees, immigrants and transplanted persons, as well as the Banyarwanda, who have been inhabitants of the region since time immemorial. Moreover, as a result of the acts of violence committed outside the refugee camps by interahamwe, MAGRIVI 8/ and former FAR members, allying themselves ever more openly with FAZ, the presence of arms inside the camps and the Zairian authorities' inability to confiscate them. 9/ The "original" ethnic groups began to attack the Banyarwanda, making no distinction between Bahutu and Batutsi, until the alliance between FAZ and the Bahutu led the Bahunde - who had a long history of resistance to the Mobutu regime - and, in particular, their Mai Mai guerrillas, to ally themselves with the Batutsi (see E/CN.4/1996/Add.1, paras. 45 et seq.). Virtually no Batutsi remain in Northern Kivu.

176. This situation, together with the provocative statements made by the Commissioner of the Uvira rural region, Shweka Mutabazi II, led the Batutsi in the South to defend themselves in order to avoid experiencing similar events, as noted by the Special Rapporteur (see para. 37 of the second report). Shweka also exacerbated tensions when, on 27 July, he ordered a search for Banyamulengue leader Muller Ruhimbika and, later, the suspension of the MILIMA NGO, which he accused of political lobbying in Europe for the Banyamulengue.

177. While there were calls from the region for the expulsion of the Banyamulengue Tutsi, there were no signs of a sensible reaction from Kinshasa or Gbadolite. What made matters worse was that Marshal Mobutu spent almost the entire second half of the year in Europe owing to an illness, and it is common knowledge that, under authoritarian regimes, an autocrat's representatives or stewards cannot take any important decisions, particularly when national interests are at stake. Nothing happened apart from an intensification of the invariably simplistic and obsequious appeal for national unity under the wing of the regime.

178. The Zairian authorities claim to have proof that the Governments of Rwanda, Burundi and Uganda played a role in the outbreak and extension of the conflict. There are, of course, undeniable links between the Banyamulengue and the leaders of Rwanda and Burundi, both of whom are Batutsi and who have always accused the Mobutu regime of assassinating the Hutu dictator of Rwanda, Juvenal Habyarimana. Many Banyamulengue fought in Rwanda for the Rwandan Patriotic Front (Front patriotique rwandais), together with their brothers in

that country and those who had returned from exile in Uganda. Many of them, although Zairian, remained in the land of their ancestors, some of them in important posts, 10/ causing trouble among the "original" inhabitants of Rwanda with whom they had lived in peace. It is also true that the Zairian Government has always ignored Rwandan and Burundian complaints of infiltration by former FAR members and interahamwe. Furthermore, on at least one occasion (30 October), the Government of Rwanda admitted making an incursion into Zairian territory, and numerous witnesses have confirmed the presence of Rwandan soldiers in Zaire.

179. Failure to resolve the problem of nationality is therefore compounded by Rwanda's desire to remove from frontier areas refugees who in general are accused of genocide, who have never been disarmed or displaced and whose incursions into Rwanda it is difficult to deny. All these facts tend to support the allegations of the Zairian Government and people about a foreign and, in particular, Rwandan, military presence in their country.

B. Extension of the conflict

180. As in any conflict, each party claims that the other fired the first shot: the Banyamulengue blame Zairian provocation, while Zaire maintains that it started with an armed attack by Rwandans and Burundians in Kiringye on 31 August, in which three of the attackers died while five were taken prisoner and later, according to the Deputy Minister for Foreign Affairs, Lokondo Yoko, confessed to being Rwandan soldiers. Amnesty International mentions the death of four Banyamulengue on 8 September and the expulsion of 286 persons from Uvira through the Kamanyola pass on 14 September. On 23-24 September, shots were fired across the border from Bukavu and Cyangungu, but both Governments deny having fired and both claim to have been fired upon. Nevertheless, the regional authorities agreed to a "cease-fire" on 27 September.

181. As the conflict expanded, incitement to hatred became more frequent, as reported in a communiqué of 26 October which stated: "The Special Rapporteur is particularly concerned by incitement to hatred on the part of Rwandan political leaders at the highest level and by the replies of the military and regional authorities of Zaire. He welcomes the spirit of moderation displayed by Mr. Kengo wa Dondo, Prime Minister of Zaire", referring to the dismissal of the Deputy Governor of Southern Kivu, Lwasi Ngabo Lwanbanji, because of his public statements. 11/

182. Among the few voices calling for calm were AZADHO, on 25 October; Monsignor Munzihirwa, Archbishop of Bukavu, on 26 October, who was assassinated on 30 October for that very reason by the rebels who had taken the city 24 hours previously; and the bishops of Goma and Kinshasa on 29 October. On 27 October, Etienne Tshisekedi called for dialogue and protested against the attacks on Rwandan students in Kinshasa.

183. During the following days, the rebels took control of other cities: Uvira on 23 October, Bukavu on 29 October - after having first seized the airport - then Goma, on 3 November. After a three-week unilateral cease-fire, the rebel advance continued in the north: Butembo fell on 14 November, then Beni and, at the end of the year, Bunia and Walikale. Next, it was announced that Kisangani and, finally, Kinshasa had fallen.

184. There were two stages to the conflict: during the first stage, which can be explained by the nationality issue, the leader was Muller Ruhimbika. But in mid-October command of the rebels was assumed by Laurent Kabila, whose avowed intent was to reach Kinshasa and expel the "illegitimate Government of Mobutu". The unknown Democratic Alliance of the Banyamulengue People became merely one of several aggressors which, together with other equally unknown groups (such as the National Council of Resistance for Democracy and the People's Congo Liberation Movement) and the long-established Kabila People's Revolution Party (PRP), formed AFDL, which believes that armed conflict is the "only way" of putting an end to the dictatorship. 12/ Numerous witnesses have reported that this group absorbed most of the Mai Mai militia, historic enemies of the power wielded by Mobutu and FAZ (see E/CN.4/1997/6/Add.1, paras. 45-52).

185. It is surprising that FAZ is unable to deal with what is either an attack originating in another small country - the official line - or a domestic rebellion. The aggressors or rebels have advanced over 500 kilometres and have taken several of the country's principal towns, encountering little resistance. All available evidence indicates that the soldiers, accustomed to looting, demoralized and lacking leadership from their guide and protector, Marshal Mobutu, were incapable of defending the country, as is confirmed by the collapse of forces that were more personal than national. As a result, the conflict is no longer one of contentious FAZ against Tutsi rebels with foreign backing; it has become a struggle between the latter (AFDL) and former FAR members and interahamwe refugees with the (fast-waning) support of FAZ.

186. Before abandoning a town, FAZ, and particularly SARM, committed all manner of atrocities and engaged in looting (in Bukavu, Goma, Beni, Butembo, Bunia, Isiro and Nyankunde), leaving the people with the bitter realization that the aggressors were really their liberators. Reprehensible barbaric acts were admittedly committed in the process of capturing towns and villages, but once in power and having become the de facto authorities, the rebels established a previously unknown state of order: "we're no longer being looted"; "we're not under fire any more"; "order has been imposed"; "we can sell and transport our goods" and other similar comments were made to the Special Rapporteur. It has been noted that the new authorities of Bukavu and Butembo have punished abuses committed by members of the occupying forces against civilians.

187. The local people have conflicting feelings: they are relieved by the fact that the looting has come to an end, but they do not trust the rebels ("We don't know whether we're in Rwanda or Zaire"); although things are calm, there is fear of the possibility of a violent FAZ campaign to recapture the area, particularly if it entails the participation of interahamwe, former FAR members or other foreigners.

188. According to ICRC sources, the conflict has resulted in some 5,000 deaths 13/ and 250,000 displaced persons. Some towns, such as Goma, have been abandoned by nearly half their inhabitants.

189. Mobutu's return to the country could provide FAZ with the leadership it lacks. Unfortunately, his first statements have not been reassuring since the idea of "reconquest" has been more in evidence than that of dialogue, which is considered unlikely to result in reconquest. Above all, the people fear the

possible recruitment of mercenaries. The Special Rapporteur, among others, has received reliable reports concerning the presence of individual armed South Africans in Kisangani.

C. Violations of human rights and international humanitarian law

190. This section does not deal with human rights violations unrelated to the armed conflict or those committed in the past by FAZ and security forces in Zaire, and includes information only on violations of article 3 common to the four Geneva Conventions of 12 August 1949. Nor does it cover acts committed in connection with strictly military operations in the course of a national or international armed conflict. In all the cases mentioned, unless explicitly stated otherwise, the victims were civilians or soldiers who had laid down their arms or were not participating in military operations.

1. Acts committed by FAZ or the Zairian authorities

191. Killings and, in particular, all forms of homicide, unknown during peacetime, have been particularly common during the conflict. The most frequent victims have been individuals suspected of being members of, or merely of sympathizing with, the Banyamulengue. In Bukavu, the most serious accusations have been directed at SARM, but there have also been numerous complaints against GC and DSP, which were sent to the region to restore order, with functions similar to those of ZCSO in the refugee camps. There have been many reports of summary executions and, generally speaking, a veritable manhunt for anyone with a Batutsi ancestor or relative, living with, or suspected of having contacts with the Batutsi; has been unleashed throughout the country. In late October, Rwandan students in Kinshasa were persecuted and their property was stolen to prevent them returning to their country. Many public demonstrations, organized to protest the presence of Rwandans, have led to the arrest of Tutsi and the stoning of their houses and other buildings. The above-mentioned Deputy Governor of Southern Kivu, Lwasi Ngabo Lwanbanji, was an extreme case, but not the only one. In Kinshasa, Goma and Bukavu, the Special Rapporteur heard numerous reports of this type of intimidation. Many witnesses stated that FAZ preferred the easy task of seeking out Tutsi civilians in the towns to that of serving on the battlefield. Cases of killings include the following: (a) Southern Kivu, September: some 40 civilians, including children, were executed in Kamanyola. Among them were Faustin Sebugorore and Rukenerwa Ndatabaye; (b) Lueba, September: some 100 Zairian Tutsi, including women and children, were murdered, reportedly with the help of Zairian civilians of the Bembe ethnic group; (c) Lutabura, 30 September: FAZ, with the help of civilians, killed some 100 Banyamulengue as a reprisal for the massacre of 19 September in Epombo; (d) Lusenda, late October: FAZ, with the help of Babembe combatants, murdered Lenge Rugaza Kabili, Chief of the Bavira, for having protected Batutsi; (e) Bunia, 1 and 2 December: FAZ soldiers murdered Nandi and Pakistani Hindu shopkeepers.

192. Assault, mutilation, torture and cruel treatment or punishment: (a) Bunia, 1 and 2 December: FAZ soldiers raped and robbed women; (b) Kinshasa, 21 October: persons who had been arrested and held at SARM on charges of collaboration with the rebels were subjected to inhuman and

degrading treatment. Women's vaginas were examined to determine whether they were carrying messages, and men's sex organs manhandled to verify their virility. All were wounded with bayonets.

193. Hostage-taking: (a) Hombo, 29 October: Lieutenant-Colonel Prosper Muganguzi Nabyolwa was taken hostage and threatened with execution. He was then reportedly sent to Kisangani, arrested by General Eluki and transferred to Kinshasa, where he is still in custody, seriously ill; (b) Bunia, November and December: under the FAZ-imposed reign of terror, young people and several shopkeepers were taken hostage.

194. Arbitrary arrests and convictions without trial:
(a) Bukavu, 10 September: 10 Banyamulengue students were arrested;
(b) Lubumbashi, November: four young members of the Union of Independent Republicans and Federalists (Union des fèdèralistes et des rèpublicains indepéndants - UFERI) accused of supporting Laurent Kabila were taken hostage and removed to Kinshasa; (c) Kinshasa, November: parliamentarian Joseph Olenga Nkoy was arrested; (d) Kinshasa, October: three VSV officials, Floribert Chebeya, Mbongo Ngudia and Benjamin Bashi, were arrested;
(e) Kinshasa, 11 November: UDPS (Kibassa Maliba sector) leader Willy Mishiki was arrested by SARM soldiers.

195. Attacks on the civilian population: (a) Uvira, 14 September: 286 civilians were expelled from Zaire to Rwanda, and a further 33 were expelled the following day; (b) Kinshasa, 11 November: a medical centre belonging to UDPS leader Denis Bazinga was looted.

196. Treatment of prisoners of war: prisoners captured in battle are particularly badly treated. They are held together in one cell, subjected to continual intimidation and not given medical care. Directors of VSV who were among the prisoners reported that one of them had complained of a terrible pain in his arm as a result of being beaten. The prisoners often go without food for days on end.

2. Acts committed by the rebel forces

197. There have been many reports of atrocities committed by AFDL, which habitually separates men from women and children. It is usually possible to determine the fate of the latter, but never that of the former.

198. Killings and, in particular, all forms of homicide: (a) Southern Kivu, 8 September: a Banyamulengue attack resulted in the death of FAZ members, including a colonel; (b) Epombo, 19 September: Banyamulengue killed some 150 Zairian civilians and 3 soldiers; (c) Aboke, 23 September: rebels killed 14 civilians; (d) Nageko, 27 September: Banyamulengue killed 2 women;
(e) Lemera, 6 October: in a barbarous act, and in flagrant violation of article 3.2 of the Geneva Conventions, a group of Banyamulengue attacked the hospital in Lemera and killed 34 people, including 17 patients. They later murdered 18 parishioners and a priest in a church in Kidote; (f) Minembwe and Munyaka, 10 October: rebels killed 150 and 19 civilians, respectively;
(g) Runingo refugee camp, 13 October: a rebel attack left 4 dead and 6 wounded; (h) Mukera, 14 October: numerous civilians were killed or wounded in a rebel attack; (i) Kiliba, 18 October: civilians, including women, children and infants, were killed in cold blood, in some cases with knives, by the

rebels; (j) Kuberezi refugee camp, 21 October: Burundian refugees were killed at dawn; (k) Bukavu, late October: Banyamulengue soldiers killed many people, including Archbishop Munzihirwa, Jean Baptiste Bahati and Professor Wasso, when they captured the town; (l) Goma, early November: rebels killed 2,754 people, roughly half of them Zairian civilians, when they took the town; (m) Bukavu, 18 November: some 500 people, including a priest who was protesting the violence, were murdered at the Chimanga refugee camp, Bukavu; (n) Beni, December: the bodies of 120 Zairian soldiers were found. There was nothing to suggest that they had died in battle.

199. Assault, mutilation, torture, cruel treatment or punishment, attacks against personal dignity and inhuman or degrading treatment: All reports indicate that AFDL kills rather than takes prisoners.

200. Hostage-taking: There are no reports of this practice.

201. Arbitrary arrests and convictions without trial: Generally speaking, the rebel forces do not take prisoners, a practice consistent with the presence in their ranks of the above-mentioned Mai Mai.

202. Attacks on the civilian population: Starting in Uvira, then in all the conquered areas, Banyamulengue forces and, later, AFDL have attacked refugee camps, including those in Kagunga and Kibigoye, causing large numbers of deaths and displaced persons. What is worse, they have committed the most serious of violations against the Convention relating to the Status of Refugees by forcibly expelling refugees to their countries of origin - Rwanda and Burundi - where, as members of the Hutu ethnic group, they have good reason to fear persecution.

3. Acts committed by former FAR members and interahamwe

203. The violence of this group - which includes those responsible for the genocide in Rwanda - has been noted in all the reports of the Special Rapporteur.

204. Assault, mutilation, torture, cruel treatment or punishment, attacks against personal dignity and inhuman or degrading treatment: (a) Kashiba, OBukavu, 31 October: four Spanish Marist monks working in the Nyamirangwe refugee camp (Servando Mayor, Miguel Angel Isla, Julio Rodríguez and Fernando de la Fuente) were killed by a group of some 100 interahamwe; (b) Kitshanga, Masisi, 6-7 November: 20 Zairian civilians, including Biku Sikawana, former Mayor of Goma, and the wife and children of Jean Marie Kati-Kati, a well-known human rights advocate, were killed by interahamwe; (c) during their westward flight from Southern Kivu, former FAR members and interahamwe took a large number of civilians hostage and later killed them, particularly in Walikale and Masisi.

205. Assault, mutilation, torture, cruel treatment or punishment, attacks against personal dignity and inhuman or degrading treatment: There are no reports of these practices.

206. Hostage-taking: In the refugee camps, former FAR members and interahamwe held as permanent hostages their own Hutu comrades who had accompanied them into exile but had not participated in the genocide, as insurance against

being forced to lay down their arms. Contrary to what had long been believed on the basis of the small number of refugees returning home - despite UNHCR efforts and pressure by the Government of Zaire - the desire of the innocent to return is demonstrated by the fact that, once free of the soldiers, over 700,000 did so. This figure may give an idea of the number who had been held hostage. The tighter control exercised by Mugunga made it possible for hostages to be held for a longer time. Furthermore, many Zairians took hostages as they fled after the fall of Goma, obliging their victims to accompany them as human shields against an attack by a multinational force, AFDL or APR.

207. Arbitrary arrests and convictions without trial: They take no prisoners.

D. Use of children

208. According to several reports, children are used in the conflict, even by FAZ, which is believed to have recruited them in Kisangani and Kindu, although there is no confirmation of the fact. The participation of children on the AFDL side appears obvious, especially as it is a tradition for the Mai Mai militia fighting alongside it to include young children. All such use is in violation of article 38 of the Convention on the Rights of the Child.

E. Impediments to the right to humanitarian assistance

209. Humanitarian assistance has been impeded by all parties to the conflict. In the area controlled by AFDL, ICRC complained on 10 December of encountering difficulties when entering the camps, a complaint echoed by humanitarian NGOs. In the areas controlled by the Zairian Government, humanitarian action was generally accepted, although under the constant threat of closing the camps and expelling the refugees. Since the Air Liberia aircraft accident in July, however, access has become more difficult. The International Organization for Migration (IOM) was prevented from acting in Zaire on 27 September; all agencies came under suspicion. Once the conflict had broken out, FAZ pillaged a great quantity of goods and vehicles belonging to agencies, including UNHCR.

XIII. CONCLUSIONS AND RECOMMENDATIONS

A. General conclusions

1. Follow-up to recommendations

210. It may be concluded from this report that the greater part of the recommendations contained in earlier reports have not been adopted by the Government, including: the effective separation of police and defence forces; an end to the irritating impunity enjoyed by members of both forces; adequate training; respect for the independence of the judiciary; acceptance of and respect for the work of NGOs; and the institution of a climate of respect for all the country's inhabitants, free of any ethnic discrimination, in the enjoyment of their human rights.

211. The Government also failed duly to cooperate with the Special Rapporteur during the year, by not agreeing to his visit to the east in July, and by not replying to any of the communications he sent it.

2. Zaire and the international community

212. The attitude of the Zairian Government, and of a great part of civil society, is strikingly hostile towards the international community, which is seen to be constantly conspiring against the country and to be the cause of all its evils: the United Nations as such, for having settled the refugees and for not having assisted Zairian displaced persons; its Secretary-General, for having proposed the integration of refugees; UNHCR for assisting the refugees, accusing it moreover of complicity with the rebels, a fact which was duly denied; the NGOs, also for complicity with the rebels; the officials of those organizations for being concerned only with maintaining their own positions; IOM, also for assisting the rebels; the International Commission of Inquiry investigating the arms traffic in the camps, for partiality; the Special Rapporteur, for lack of objectivity; the Human Rights Commission, for having appointed a Special Rapporteur, etc.

213. Furthermore, Zaire has flatly refused to cooperate with bodies seeking solutions to the Great Lakes crisis. Two meetings were held in Nairobi with the participation of the Organization of African Unity and Governments not involved in the conflict (on 5 November and 12 December) without the presence of Zaire, despite the fact that Marshal Mobutu had said he would attend the latter meeting.

3. Respect for the democratic process

214. The year's events confirmed what the Special Rapporteur had stated in his reports, regarding the need effectively to curtail the powers of President Mobutu. Owing to his absolute control of FAZ, while he was away the armed forces lacked the necessary leadership to deal with the emergency in the east, with the inevitable results.

215. What is remarkable is that although Zaire is losing on the battlefield, the head of State has emerged stronger: stronger with the armed forces, which call for his leadership; stronger in international affairs, since he is seen as the only person capable of resolving a regional crisis; and stronger in politics, since even his most critical opponents have joined him in the effort of national reconciliation.

216. The establishment of CNE is to be welcomed, although the latter, and the politicians in general, have to make an enormous effort to recover the trust of the population, which has been completely lost. They will not achieve this if they continue regarding the democratic process as merely a way of satisfying unwelcome external pressures, rather than for what it is, namely the recognition of the human right to live under the rule of law, free of fear, and with guaranteed respect for the dignity of every human being.

217. The Special Rapporteur is afraid that the transition, which is already in its seventh year, will not be completed by the planned date, namely, 9 July, and that the politicians will make new agreements to extend it, disregarding the will of the people. The electoral process must not be paralysed, not even

on the grounds of the events in the east. In any case, no prolongation based on the conflict would be credible, since the delay in dealing with the electoral laws and prior requirements originated before the outbreak of the conflict in South Kivu.

218. The Special Rapporteur noted no liberalization whatever of State radio and television, compared with what he had observed in the course of his visits in 1994 and 1995.

219. The Zairian State, which has been absent for years as the promoter of the common good and the guarantor of respect for human rights, displayed another unsuspected shortcoming in 1996, namely, a lack of armed forces to defend it.

4. The observance of human rights

220. The Special Rapporteur is unable to change the view he expressed the previous year: in 1996, there was no significant progress in the area of human rights. The Government is convinced that this statement reflects a lack of objectivity on the part of the Special Rapporteur, whereas this is not so. In order to show that there has been some progress, the Government suggests comparing the situation with the period of the State party, which ended in 1990, although that argument is unacceptable since it leads to conformism and paralysis. There has been no improvement with respect to the right to life or to the physical and mental integrity of individuals. Torture and ill-treatment have continued. There has been no improvement in the situation regarding economic, social and cultural rights, in the situation of women or children, and no improvements either in prison conditions, or with regard to the right to justice, or the right of the public to be informed.

221. There has been one improvement which inspires confidence in the Special Rapporteur, in that on 10 December an HCRH mission was set up in Kinshasha, for the purpose of monitoring the human rights situation, informing the Special Rapporteur and the High Commissioner, as well as advising the Government and NGOs in their promotion and protection activities.

222. The National Commission for the Promotion and Protection of Human Rights has been set up, though without producing any apparent result so far.

223. No solution has been sought to the problem, which in the view of the Special Rapporteur is artificial, of the nationality of the Banyarwanda. On the contrary, the Batutsi of North Kivu have been persecuted and expelled, as explained in the addendum to this report.

5. The conflict in Kivu

224. The Special Rapporteur is convinced that this conflict could and should have been avoided. It could perfectly well be resolved through dialogue. None of the parties to the conflict has fulfilled the obligations arising from article 3 common to the four Geneva Conventions, and serious violations of its provisions have occurred, including attempts on life and physical integrity, homicide, torture, taking of hostages, outrages upon personal dignity and arbitrary arrests, including arrests of wounded and sick people, without the justification of military necessity.

225. The conflict, moreover, has served as an excuse for the violation of the human rights of persons not involved in the conflict.

B. Recommendations

1. To the Zairian authorities

226. Democracy and human rights. Regardless of developments in the armed conflict in the east, the democratization process cannot be paralysed, but on the contrary should be speeded up and extended, with political circles becoming aware that the crisis occurring in Zaire will only begin to resolve itself when democracy is introduced, free of the influence of Messiahs of another age. Special importance should be given to effective grass-roots training in human rights, democracy and tolerance, especially for young people and women.

227. Civil and political rights. The Special Rapporteur reiterates all the recommendations made in his first two reports, and in the additional report, particularly regarding the need to investigate and punish all abuses of human rights. FAZ should protect the people and not to violate their rights. Recognition of the human right to nationality in accordance with international instruments is particularly important. It should also be ensured that Zairian nationality is not acquired fraudently, as might occur with the interahamwe, who have seized the identity cards of Batutsi expelled to Rwanda, as stated in the additional report.

228. Economic, social and cultural rights. It should not be forgotten that Zaire is an extremely rich country, perfectly able to allow its people to enjoy economic, social and cultural rights, and if this has not been achieved, it is purely because the measures required in the International Covenant on Economic, Social and Cultural Rights, which should be applied without delay, have not yet been adopted.

229. Relations with the United Nations. One serious difficulty which leads to the wrong decisions being taken is seeing enemies where there are none. Zaire is as much a member of the international community as any other country; it has the right to request cooperation, and the obligation to provide assistance. The Special Rapporteur would encourage the authorities to assume an attitude of belonging and not of rejection based on imaginary facts. Zaire's presence this year in CHR may provide a wonderful opportunity for demonstrating a commitment to the cause of human rights. Zaire must also cooperate with all CHR's mechanisms and respond to requests and action decided upon, and especially with the Special Rapporteur on the situation of human rights in the country.

230. International humanitarian law. The Government and all the parties to the Kivu conflict are obliged to respect fully the norms set out in article 3 common to the Geneva Conventions. The Government should in particular abstain from inciting to national and racial hatred, and from adopting repressive measures solely on ethnic grounds.

231. Ratification of international instruments. It is essential that the Government should immediately deposit its instrument of ratification of Protocol Additional II to the Geneva Conventions, and also Protocol

Additional I. The Special Rapporteur also recommends making the declarations provided for in article 21 of the Convention Against Torture and article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination.

232. Peace process. The armed conflict must arrive at a solution, and the only way is through dialogue. The authorities must abstain from all incitement to national or racial hatred. Both the rebels and sectors of the Zairian opposition have expressed their willingness to do so. Only the Government has failed to do so. Friendly countries and world leaders have also offered their services, but the Zairian Government does not take part in the consultations.

2. To the international community

233. Return of refugees and repair of damage: Zaire has suffered a great deal from the presence of refugees on its territory, much more than it can bear. The country needs rebuilding, which requires an effort on the part of the international community as a whole, the main problems being: (a) relocating remaining refugees in Zaire who do not wish to return voluntarily; (b) assisting internal displaced persons; (c) rehabilitating the environment.

234. Assistance for the democratic process. The return to democracy is a problem for Zairians, which they must assume as such, but international assistance will continue to be indispensable.

235. Office of the High Commissioner for Human Rights. The work of this Office should be maintained, but it must be taken into account that when the Special Rapporteur proposed establishing the Office in 1994 with two specialists, the North Kivu conflict had not broken out, nor the one in the South, which was not even divided. It must also be realized that two specialists, located in Kinshasa, cannot perform very effective work in present conditions.

236. Support for NGOs. The Special Rapporteur reiterates the need to professionalize the NGOs, which requires international support.

237. Participation of the Special Rapporteurs for the Great Lakes countries in regional discussion and coordination bodies. It is surprising that the CHR's Special Rapporteurs on the situation of human rights in Burundi, Rwanda and Zaire do not participate in these bodies, although they have frequently offered to cooperate with efforts to overcome the crisis.

238. To United Nations bodies. In his additional report, the Special Rapporteur drew attention to a lack of coordination among United Nations bodies and, in many cases, the absence of CHR representation (paras. 133 to 138); the same was pointed out by the three Special Rapporteurs in the report on their first meeting (E/CN.4/1996/69, para. 17(f)). The Special Rapporteur would emphasize the need for greater coordination, as called for by the World Conference on Human Rights in Vienna.

239. Advisory opinion of the International Court of Justice. In accordance with Article 65, paragraph 1 of the Charter of the United Nations, the Special Rapporteur suggests that the Economic and Social Council should request the International Court of Justice to give an advisory opinion on the subject of the nationality of the Banyarwanda in conformity with the principles of international law.

240. Special treatment of the situation in the Great Lakes region in the Commission on Human Rights. In his additional report, the Special Rapporteur proposed holding an extraordinary session of the Commission on Human Rights to deal with the situation in the Great Lakes region, at the same time endorsing the proposal by the three Special Rapporteurs for the adoption of a joint resolution. The Special Rapporteur reiterates this proposal, but if it should not be accepted, proposes that in the course of the fifty-third session, one day should be devoted exclusively to the study of the situation in Burundi, Rwanda and Zaire. At the fifty-second session, a day was devoted exclusively to Burundi, and it would seem most advisable to do the same on this occasion for the three countries together.

Notes

1/ The first report (paras. 61-84) contains a study of FAZ and security forces, and on the system of impunity.

2/ Although the referendum was to have been held in February, there is no indication that this will happen.

3/ Paragraphs 156-159 and 257 of the first report; 75 and 122 of the second; 82 of the addendum to this report.

4/ E/CN.4/1995/67, para. 57; E/CN.4/1996/66, paras. 24, 26, 29, 30, 84, 85, 130; E/CN.4/1997/6/Add.1, paras. 98-102.

5/ Letter to world leaders.

6/ As mentioned in the report on the mission to Rwanda, two statements contained in the second report were criticized: (a) the fact that the Banyamulengue numbered some 400,000 and (b) that since the eighteenth century they have been living on what is now Zairian territory.

Both of these points are dealt with in the mission report. With regard to the numbers involved, owing to the lack of statistics these range from 12,000 persons up to as many as 500,000. The Special Rapporteur does not, of course, believe he possesses the ultimate truth, but one point is that, however much outside aid may have been provided in the present crisis, a conflict covering the entire region, and which has been successful for the rebels until the close of this report, simply could not have been unleashed by a group of 12,000 persons against a country with a population of over 45 million.

As for the arrival of these Batutsi in Zaire, the Deputy Prime Minister, Kamanda wa Kamanda, informed the Security Council that they arrived in 1924.

In Brussels, the Special Rapporteur interviewed one of the chief

authorities on this subject, Professor George Weis, who told him that "it is undeniable that the Tutsi of Fizi, Mwenga and Uvira were there before the arrival of the Belgians and were recognized by the colonial administration", and he maintains that it is not unlikely that they may number between 200,000 and 300,000. The former Governor of Kivu and Maniema, Maurice Willaert, who lived in the Congo for over 30 years, confirmed that those people arrived in the Congo before the whites, whether German or Belgian, a fact which is also confirmed by Professor Bourgeois, who however disagrees with the numbers mentioned by the Special Rapporteur. Jean Hiernaux (Notes sur les tutsi de L'Itombwe, (Notes on the Tutsi of Itombwe)) maintains that they arrived during the nineteenth century, "before the arrival of the Europeans" ("avant l'arrivée des européens" (Mémoires de la Société d'anthropologie de Paris)). Professor J.C. Willame maintains that the figure is around 15,000.

7/ La loi "est revisée sur la base des grandes options politiques arrêtées par le Comité central du Mouvement populaire de la révolution à la suite de l'épineuse question posée dans le discours du Président-fondateur duMouvement populaire de la révolution. Président de la République, à l'ouverture de la session de cet organe le 26 mars 1981 ...".

8/ Report E/CN.4/1997/6/Add.1 states that the Virunga Farmers Association (MAGRIVI), representing the Bahutu, sells agricultural products to purchase arms, and that while originally it might have had an associative purpose, it then became a militia aiming to seize power. The Special Rapporteur did not have an opportunity to interview leaders of this Association until his mission in October. Founders and leaders told him that MAGRIVI, founded in 1980, had not lost its original function, but they recognized that, being a factor of identification of the Hutu community, it is usually identified with ethnic extremists.

9/ In resolutions 1013 (1995) and 1053 (1996) the Security Council set up and maintained an International Commission of Inquiry to investigate the complaint of Human Rights Watch/Africa regarding the introduction of weapons in refugee camps in Zaire (see second report, paras. 52-54). In its provisional report (S/1996/67, annex), the Commission suspected that "clandestine activities" were being carried out in Goma and that Rwandan refugees received training to conduct "incursions into Rwanda"; in its final report (S/1996/195, annex), the Commission complains of the lack of cooperation by the Zairian Government, and concludes that the former FAR and interahamwe receive arms in violation of the Security Council's embargo and appear prepared to invade Rwanda, while it is suspected that arms are transported by the Zairians.

10/ These include maître Hodali Nsinga, FPR Deputy and Adviser in the Office of the President of the Republic; maître Rukangiba, Judge at the Court of Appeal; Kabenga, Procurator in Butare; Paul Buyenzi, member of the Supreme Court of Justice; army officers Zimuninda Kidumu and Kayijyka François and many others.

11/ Some of the most virulent are the speech by the President of Rwanda in Cyangungu, the chief of the Zairian General Staff Eluki Mponga, and the HCR-PT agreements of 18 and 27 September.

12/ Kabila once fought alongside Lumumba, after Pierre Mulele (1963). He was allied with Ernesto Che Guevara in his incursions into Congo in 1965, who considered Kabila's troops as "parasites". He is Shabian and took part in the secession conflicts in the 1960s and 1970s, for which he was sentenced and later amnestied. He has spent the last years of his life between Tanzania and Uganda, and discredits all the democratic claims of the Zairian people, particularly the protests and the villes mortes of 1991 and 1992, as well as the historic participtiption in CNS, in which his own PRP refused to participate. He says he is the only leader who is not corrupt and genuinely anti-Mobutu. His second in command is a Kasaian, who shares his secessionist ideas.

13/ Around two thirds are assumed to be non-combatant Zairian citizens; most of the rest are Rwandan refugees, many of whom are also non-combatants.